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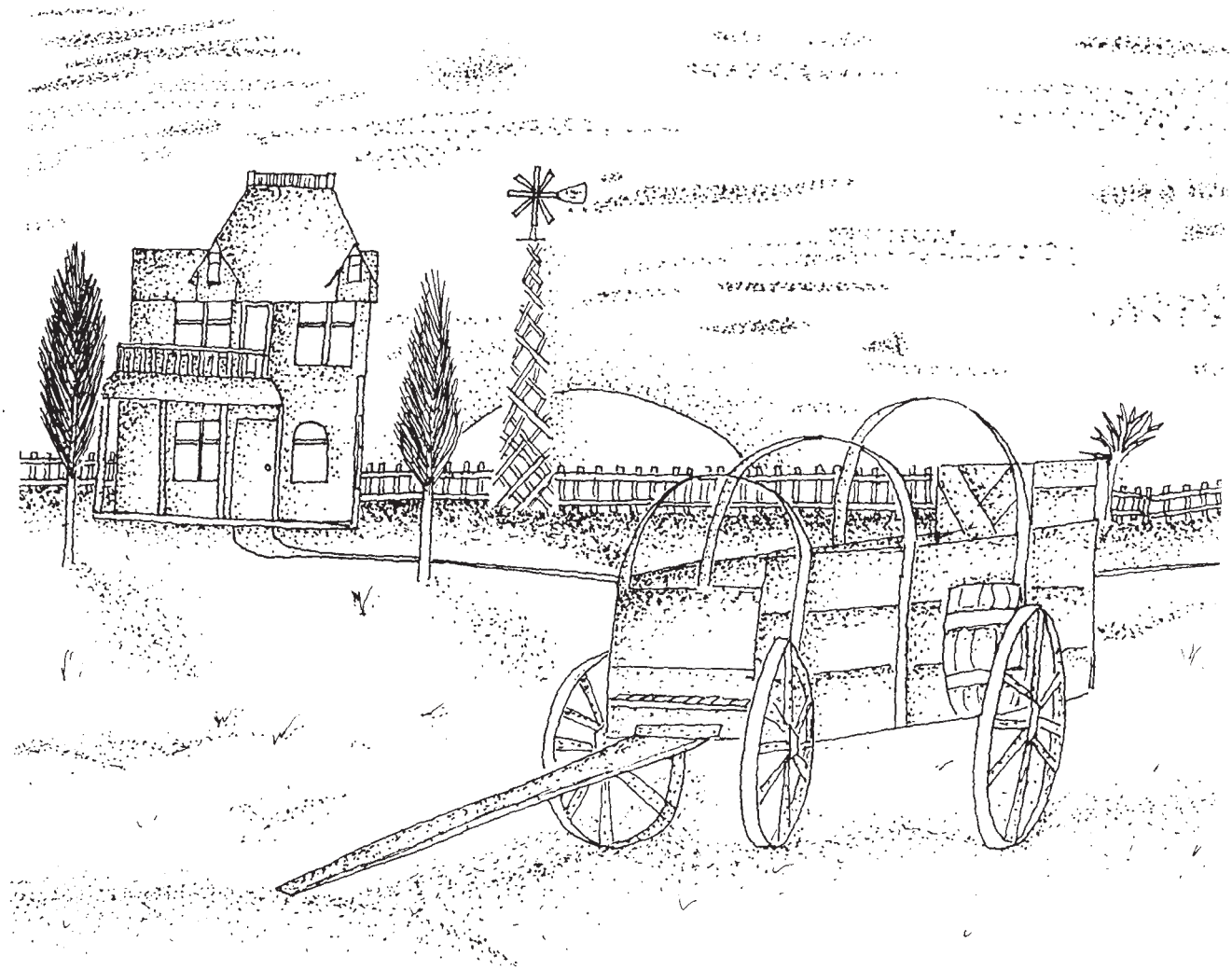

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9th Grade

Rockwall High School

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ATTORNEY GENERAL

EMERGENCY RULES

PROPOSED RULES

OFFICE OF THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code. Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the ***Texas Register***. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Open Records Decision

Decision. ORD-661. (ORQ-30). Mr. James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, regarding open records decision concerning the required public release under the Public Information Act, chapter 552 of the Government Code, of information on maps used for the provision of 9-1-1 emergency services, and related questions. (ORQ-30).

Summary. Section 771.061(a) of the Health and Safety Code makes confidential certain information telephone companies and the United States Postal Service furnish a governmental entity that provides computerized 9-1-1 emergency services. Such information is also confidential when included in maps used by a governmental entity in the provision of emergency services. The applicability of §552.110 of the Government Code to a map used by a governmental entity in the provision of emergency services must be determined on a case-by-case basis. The Deep East Texas Council of Governments has discretion to release information made confidential by §771.061(a) to a county judge for the purpose of sending tax notices or voter registration notices. Section 552.231 of the Government Code enables a governmental body and a requestor to reach an agreement as to the cost, time, and other terms of responding to a request for information in certain situations that require the governmental body to program or manipulate electronic data.

TRD-9905263
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: August 18, 1999

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Open Records Question

Parties interested in submitting a brief to the Attorney General concerning this ORQ are asked to please submit the brief no later than September 10, 1999.

Question. ORQ-35. Requested by: Mr. Thomas F. Keever, Assistant District Attorney, Denton County, P.O. Box 2850, Denton, Texas 76202, regarding whether daily requests that seek all of a governmental body's incoming and outgoing mail for each day are valid requests under the Public Information Act and related questions (ID# 127533-99).

TRD-9905294
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: August 19, 1999

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Opinions

Opinion #JC-0096. (RQ-1118). The Honorable Sid L. Harle, Chairman, Court Reporters Certification Board, P.O. Box 13131, Austin, Texas 78711-3131, regarding whether the Court Reporters Certification Board may disapprove a court reporting firm's application to register with it and related questions.

Summary. Subsection 52.021(h) of the Government Code, which requires court reporting firms to register with the Court Reporters Certification Board by completing an application in a form adopted by the Board, does not authorize the Board to establish or evaluate qualifications of a court reporting firm. A court reporting firm needs only to complete an application in a form approved by the Board to register pursuant to subsection 52.021(h). The legislature intended subsection 52.021(i) of the Government Code, which provides that rules applicable to a court reporter are also applicable to a court reporting firm, to subject court reporting firms to rules on unprofessional conduct set out in section IV. B. of the "Standards and Rules for Certification of Certified Shorthand Reporters." See Standards and Rules, supra, 547, IV. B. However, the legislature did not authorize the Board to impose sanctions on court reporting firms that fail to comply with the rules. Individual court reporters, including court reporters employed by a court reporting firm, are subject to the provisions of the statute and rules governing the conduct of court reporters. The Board has authority to impose sanctions on the court reporters for violating these provisions.

Opinion #JC-0097. (RQ-0025). Bruce Levy, M.D., J.D., Executive Director, Texas State Board of Medical Examiners, P.O. Box 2018, Austin, Texas 78768-2018, regarding whether a therapeutic optometrist may perform certain procedures; request for reconsideration of Attorney General Opinion DM-425 (1996).

Summary. The Texas Optometry Act, Texas Revised Civil Statutes article 4552-1.02, forbids a therapeutic optometrist to perform surgery. As amended by the Seventy-sixth Legislature, the Act expressly defines "surgery." Attorney General Opinion DM-425 (1996) defined "surgery" under the Act according to the term's ordinary meaning. To the extent it defined "surgery" according to the term's ordinary meaning, Attorney General Opinion DM-425 is superseded by statute.

Opinion #JC-0098. (RQ-0034). The Honorable Tim Curry, Tarrant County Criminal District Attorney, Justice Center, 401 West Belknap, Fort Worth, Texas 76196-0201, regarding whether county commissioners court may authorize the collection of fees and costs pursuant to §51.702(b) of the Government Code.

Summary. A county commissioners court may authorize the collection of fees and costs by statutory county courts under §51.702 of the Government Code in accordance with the decision of a state district court. However, collection of the fees may be declared unconstitutional by a different district court or by an appellate court.

Opinion #JC-0099. (RQ-0039). The Honorable Jeff Wentworth, Chair, Nominations Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, regarding whether a student who is excused from a public school for a temporary absence pursuant to §25.087(b) of the Education Code may be denied certain benefits.

Summary. Students whose absences are excused pursuant to §25.087(b) of the Education Code and who successfully complete the missed work within the reasonable time afforded them by the statute may not be deprived of a benefit based on "perfect attendance."

TRD-9905409
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: August 25, 1999

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EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 21. Student Services

Subchapter F. Matching Scholarships to Retain Students in Texas

19 TAC §§21.151-21.156

The Texas Higher Education Coordinating Board adopts on an emergency basis new §§21.151-21.156 concerning Matching Scholarships to Retain Students in Texas.

The new rules are to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action to implement House Bill 2867 passed by the 76th session of the Texas Legislature. The rules will be used by the colleges and universities to make matching grants to students who have received offers from our-of-state institutions.

The new rules are adopted on an emergency basis under Texas Education Code, §61.086.

§21.151. Purpose.

The purpose of this program is to enable eligible institutions to use funds appropriated to it to encourage Texas students to attend college in Texas rather than go to college out of state.

§21.152. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Program officer–The individual on a college campus who is designated by the institution's Chief Executive Officer to represent the program described in this subchapter on that campus. Unless otherwise designated by the Chief Executive Officer, the Director of Student Financial Aid shall serve as program officer.

(2) Resident of Texas–A resident of the State of Texas as determined in accordance with Subchapter B, of this chapter (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are not included.

§21.153. Eligible Institutions.

Eligible institutions include institutions of higher education and private or independent institutions of higher education as defined in the Texas Education Code, Chapter 61.003.

§21.154. Eligible Students.

To be eligible to receive an award through this program, a student must:

(1) be a Texas resident;

(2) provide proof to the Texas institution that he or she has been offered a non-athletic scholarship or grant, including an offer of payment of tuition, fees, room and board, or a stipend, by an out-of-state institution; and

(3) have been accepted for admission to the out-of-state institution offering the assistance.

§21.155. Funds for Awards.

(a) Upon receipt of proof that a student is eligible, an eligible institution may use any funds appropriated to the institution or other funds that the institution may use for the awarding of scholarships or grants, to offer the student an award that matches the offer from the out-of-state institution.

(b) In identifying which funds may be used for making matching scholarships through this subchapter, the institution must exclude funds for any program for which the student recipient would be disqualified by federal or state statute, donor specifications, or any funds that are otherwise restricted by law.

§21.156. Reporting Requirements.

(a) For all students offered a matching award through the program described in this subchapter, the institution shall report on an annual basis to the board:

(1) the race or ethnicity, gender, and high school of graduation of each student;

(2) the name of the competing out-of-state institution;

(3) the types and amounts of all scholarships or grants offered by the out-of-state institution for which the reporting institution offered a matching award under this subchapter; and

(4) the types and amounts of all matching scholarships or grants offered by the reporting institution.

(b) For all students accepting a matching award through the program described in this subchapter, the institution shall report to the board:

(1) the race or ethnicity, gender, and high school of graduation of each student;

(2) the name of the competing out-of-state institution;

(3) the types and amounts of all scholarships or grants offered by the out-of-state institution for which the reporting institution offered a matching award under this subchapter; and

(4) the types and amounts of all matching scholarships or grants awarded by the reporting institution.

(c) Each reporting institution shall also report to the board the methods it has used to encourage Texas high school graduates to attend the reporting institution.

Filed with the Office of the Secretary of State, on August 17, 1999.

TRD-9905226
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: August 17, 1999
Expiration date: December 15, 1999
For further information, please call: (512) 483-6162

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Subchapter N. Teach for Texas Conditional Grant Program

19 TAC §§21.430-21.449

The Texas Higher Education Coordinating Board adopts emergency new rules §§21.430-21.449, concerning Teach for Texas Conditional Grant Program. The new rules are to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action to implement the Teach for Texas Conditional Grant Program. The grant program was passed in House Bill 713 by the 76th session of the Texas Legislature. The rules will be used by the deans of the colleges of education and the financial aid offices to make grants to college students.

The new rules are proposed under Texas Education Code, §56.603.

§21.430. Purpose.

The purpose of the Teach for Texas Conditional Grant Program is to encourage students to become teachers and to encourage these newly certified teachers to teach in fields having a critical shortage of teachers or in communities having a critical shortage of teachers.

§21.431. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Academic period – A twelve month period designated by an approved institution.

(2) Board – The Texas Higher Education Coordinating Board.

(3) Commissioner – The commissioner of higher education, the chief executive officer of the board.

(4) Community experiencing a critical shortage of teachers – As defined by the Commissioner of Education.

(5) Enrolled for at least a three-quarter time – For undergraduates, enrolled for the equivalent of nine semester credit hours in a regular semester.

(6) Enrolled at least half time – For undergraduates, enrolled for the equivalent of six semester credit hours in a regular semester.

(7) Fifth-year certification student – A student at an approved institution enrolled in a fifth-year educator certification program.

(8) Good cause – See Section 21.436 of this title (relating to Hardship and Other Good Cause.)

(9) Program officer – The individual on a college campus who is designated by the institution's chief executive officer to represent the program described in this subchapter on that campus. Unless otherwise designated by the chief executive officer, the Director of Student Financial Aid shall serve as program officer. If the day- to-day administration of this program is delegated to a student financial aid officer, the Director of Student Financial Aid must notify the board and provide the name and telephone number for that person.

(10) Recipient – A person who has received a Teach for Texas Conditional Grant.

(11) Recommended or advanced high school curriculum – The curriculum specified in the Texas Education Code, Section 28.002 or Section 28.025.

§21.432. Priorities of Application Acceptance and Selection Criteria.

(a) Acceptance of applicants shall depend on the availability of appropriated and other funds designated to support the program. Selection of applicants to participate in the program shall be based upon criteria approved by the commissioner in order to use limited funds effectively.

(b) Renewal applicants shall be given priority over first-time applicants.

(c) In any year in which funds are insufficient for the number of eligible applicants, the board may encumber Teach for Texas Conditional Grant funds.

§21.433. Approved Institution.

(a) The Teach for Texas Conditional Grant is available only through institutions approved for participation in the TEXAS Grant Program.

(b) Each approved institution shall designate a Teach for Texas Conditional Grant program officer.

(c) Eligible Institutions. Eligible institutions include institutions of higher education and private or independent institutions of higher education as defined in the Texas Education Code, Chapter 61.003.

(d) Accreditation.

(1) Approved institutions shall file with the commissioner a copy of the most recent formal notification of accreditation by the Southern Association of Colleges and Schools. Nonprofit, independent professional schools which award bachelor's or other higher degrees, and which are not members of the Southern Association of Colleges and Schools, may petition the board for consideration of approval.

(2) If the institution is placed on public probation by its accrediting agency, students applying for Teach for Texas Conditional Grants shall provide evidence of knowledge of the school's accreditation status as a condition to receiving the award.

(e) All institutions participating in the program described in this subchapter must meet board reporting requirements for both the TEXAS Grant and the Teach for Texas Conditional Grant in a timely fashion.

§21.434. Eligible Students.

To be eligible a student must

(1) be enrolled at least three-quarter time in an approved institution as a junior, senior, or, in the case of five-year educator certification programs at approved institutions, a fifth-year certification student;

(2) after August 31, 2001, receive a TEXAS Grant;

(3) if a junior, senior, or fifth-year certification student in the 1999-2000 or 2000-2001 academic year, not have received a TEXAS Grant but meet all of the requirements to receive a TEXAS Grant except

(A) graduation from a public or accredited private high school in Texas not earlier than the 1998-1999 school year in the recommended or advanced high school curriculum or

(B) receipt of an associate degree from an eligible institution on or after May 1, 2001;

(4) either

(A) be enrolled in a baccalaureate degree program in a teaching field certified by the commissioner of education as experiencing a critical shortage of teachers in Texas in the year in which the student begins the degree program or

(B) agree to teach in a public school in Texas in a community certified by the commissioner of education as experiencing a critical shortage of teachers

(i) in any year in which the person receives a Teach for Texas Conditional Grant or

(ii) in any subsequent year in which the person fulfills the teaching obligation; and

(5) agree to teach full-time for five years at the preschool, primary, or secondary level in a public school in Texas

(A) in a field having a critical shortage of teachers or

(B) in a community experiencing a critical shortage of teachers.

(6) be recommended by the dean of the college or school of education at the approved institution.

§21.435. Six-Year Eligibility Period.

(a) The eligibility period for the TEXAS Grant and the Teach for Texas Conditional Grant combined is six years from the date of the initial TEXAS Grant, provided the number of hours completed during the six-year period is no more than 150 hours and the number of hours completed during the time of eligibility for the Teach for Texas Conditional Grant is no more than 90 hours. The 90 hours of eligibility for the Teach for Texas Conditional Grant are included in the 150 hours.

(b) To receive the Teach for Texas Conditional Grant during the six-year period of eligibility, a student must

(1) be enrolled at least three-quarter time and

(2) earn an overall grade point average of at least 2.5 on a four-point scale or the equivalent on course work previously attempted at institutions of higher education.

(c) During the six-year period of eligibility, a student receiving the TEXAS Grant or Teach for Texas Grant may, based upon a determination of hardship or other good cause, maintain eligibility for the grants if enrolled less than three-quarter time but not less than half time during a semester of enrollment.

(d) During the six-year eligibility period for the Teach for Texas Conditional Grant, the approved institution shall provide to the board regular, periodic student status reports as determined by the board.

§21.436. Hardship and Other Good Cause.

Hardship and other good cause may be determined by the board based upon documented circumstances. The board may request assistance from the program officer at an approved institution in determining these situations and in providing documentation. Such situations include, but are not limited to, the following:

(1) a severe illness or other debilitating condition that may affect the recipient's academic performance or

(2) responsibility of the recipient for the care of a temporarily disabled dependent that may affect the recipient's academic performance.

§21.437. Reduced Enrollment.

(a) During the eligibility period, enrollment for less than three-quarter time but not less than half time for hardship or other good cause may be approved by the program officer.

(b) The program officer shall inform the board of recipients approved to enroll for less than three-quarter time.

(c) The board may require from the program officer documentation of determination of good cause for reduced enrollment should it affect the beginning of the repayment period for a recipient.

§21.438. Amount of Grant.

(a) The maximum amount of a Teach for Texas Conditional Grant shall equal two times the amount of the TEXAS Grant for the same academic period from funds appropriated specifically for the TEXAS Grant. A student may receive a TEXAS Grant and a Teach for Texas Grant for the same academic period.

(b) The combination of the Teach for Texas Grant, the TEXAS Grant, and any other student financial aid may not exceed the cost of education.

§21.439. Eighteen-Month Period Before Employment.

(a) The recipient must become certified to teach in Texas not later than 18 months after the baccalaureate degree is conferred.

(b) A certified teacher who received a Teach for Texas Conditional Grant must begin fulfilling the five-year service obligation for the Teach for Texas Conditional Grant within eighteen months after the baccalaureate degree is conferred.

§21.440. Service Obligation Period.

(a) A certified teacher must teach full-time for five years

(1) in a field having a critical shortage of teachers or

(2) in a community experiencing a critical shortage of teachers.

(b) A certified teacher has six years in which to complete a five-year service obligation.

(c) The service obligation period begins on the first day the certified teacher begins qualified employment.

(d) The board may grant an extension of the service obligation period not to exceed 12 months to complete the five-year teaching obligation for good cause as determined by the board.

(e) During the service obligation period, the recipient shall provide the board with regular, periodic reports of his or her status.

§21.441. Conditions of Grant.

(a) The Teach for Texas Conditional Grant becomes a loan and shall be reported to credit reporting agencies when the recipient fails to

(1) remain enrolled at least half-time in an eligible institution,

(2) make satisfactory progress in the degree program or educator certification program,

(3) complete the degree program within the six-year eligibility period.

(4) be certified as a teacher within eighteen months after the baccalaureate degree is conferred.

(5) begin the service obligation within eighteen months after the baccalaureate degree is conferred.

(6) complete the five-year teaching obligation within six years of beginning the service obligation period.

(7) provide a regular, periodic report of enrollment or employment status and location to the board within a reasonable period of time as determined by the board.

(b) Recipients must sign a promissory note acknowledging the conditional nature of the grant and promising to repay the outstanding principal, interest, and reasonable collection costs.

§21.442. Loan Interest.

(a) The interest rate charged on Teach for Texas Conditional Grants shall be determined by the commissioner and shall be a fixed, simple interest rate.

(b) Interest begins to accrue upon the date the grant becomes a loan.

(c) Interest does not accrue during of periods of educational deferment.

§21.443. Repayment of Loans.

(a) The Teach for Texas Conditional Grant shall be repaid in installments over a period of not more than ten years from the date the grant becomes a loan.

(b) A recipient shall begin making payments within sixty days of the date on which the Teach for Texas Conditional Grant becomes a loan.

(c) The repayment amount shall be based upon the proportion of the remaining unfulfilled service obligation.

(d) The minimum repayment amount is $1,200 annually or an amount required to repay the loan within 10 years, whichever is greater.

§21.444. Educational Deferments.

Deferments apply only to qualified recipients during periods of eligible enrollment during the six-year eligibility period.

§21.445. Forbearance.

Periods of forbearance may be granted to recipients of Teach for Texas Conditional Grants in repayment under certain documented circumstances as determined by the board. Periods of forbearance shall extend the ten-year repayment period.

§21.446. Enforcement of Collection.

(a) When a recipient of a Teach for Texas Conditional Grant shall have failed to make six monthly payments in accordance with the promissory note(s), then the full amount of remaining principal, interest, and/or late charges shall immediately become due and payable. The recipient's name and last known address and other information as requested by the commissioner shall be reported to the attorney general or any county or district attorney acting for him or her in the county of the recipient's residence or in Travis County, unless the attorney general shall find reasonable justification for delaying suit and shall advise the commissioner in writing.

(b) Upon notification by the commissioner of default on the loan, the educational institution shall cause the records, including transcripts of the recipient, to become unavailable to him or her or any other person outside the institution until the participating institution has been notified by the commissioner that default has been corrected.

(c) In all cases of default, the recipient shall be responsible for the payment of principal and all accrued charges, including interest, late charges, any collections costs incurred, court costs, and attorney fees.

§21.447. Provisions for Disability and Death.

The board shall cancel a recipient's repayment or service obligation if it determines:

(1) on the basis of a sworn affidavit of a qualified physician, that the recipient is unable to teach on a full-time basis because the recipient is permanently, totally disabled;

(2) on the basis of a death certificate, that the recipient has died; in the case of death, the board may pursue collection from the recipient's estate if the debt has been reduced to judgment before the death of the recipient.

§21.448. Advisory Committee.

The board's Financial Aid Advisory Committee shall function as the advisory committee to the board in the administration of the program described in this subchapter.

§21.449. Dissemination of Information.

The board and its advisory committee are responsible for publishing and disseminating general information and program rules for the Teach for Texas Conditional Grant Program to approved Texas institutions of higher education, appropriate associations, and other interested entities.

Filed with the Office of the Secretary of State,on August 17, 1999.

TRD-9905228
James McWhorter
Assitant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: August 17, 1999
Expiration date: December 15, 1999
For further information, please call: (512) 483-6162

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Subchapter O. Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program

19 TAC §§21.460-21.464, 21.466-21.472, 21.474-21.486

(Editor's note: The text of the following sections are being repealed on an emergency basis and will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board adopts on an emergency basis the repeal of §§21.460-21.464, 21.466-21.472, and 21.474-21.486 concerning Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program.

The repeal of the rules is adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action because the program was transferred to the Center for Rural Health Initiatives and new rules are being written to replace this.

The repeal of the rules is adopted on an emergency basis under Texas Education Code, §61.877.

§21.460. Purpose.

§21.461. Administration.

§21.462. Delegation of Powers and Duties.

§21.463. Definitions.

§21.464. Allied Health Professional.

§21.466. Eligible Institution of Higher Education.

§21.467. Community Agent.

§21.468. Eligible Scholar.

§21.469. Rural Scholar.

§21.470. Outstanding Rural Scholar.

§21.471. Outstanding Rural Scholar Advisory Committee.

§21.472. Outstanding Rural Scholar Recognition Program.

§21.474. Designation of Outstanding Rural Scholars.

§21.475. Qualifications for Forgiveness Loans.

§21.476. Priorities for Application Processing.

§21.477. Annual Loan Limits.

§21.478. Payments to Students.

§21.479. Change in Student Status.

§21.480. Returned Funds.

§21.481. Conditions of Loans.

§21.482. Interest on Forgiveness Loans.

§21.483. Compliance with Conditions of Forgiveness Loans.

§21.484. Noncompliance with Conditions of Forgiveness Loans.

§21.485. Directory of Community Agents.

§21.486. Dissemination of Information.

Filed with the Office of the Secretary of State, on August 17, 1999.

TRD-9905232
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: August 17, 1999
Expiration date: December 15, 1999
For further information, please call: (512) 483-6162

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Subchapter O. Early Childhood Care Provider Student Loan Repayment Program

19 TAC §§21.465-21.477

The Texas Higher Education Coordinating Board adopts on an emergency basis new §§21.465-21.477 concerning Early Childhood Care Provider Student Loan Repayment Program.

The new rules are to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action to implement House Bill 1689 passed by the 76th session of the Legislature. The new rules will be used by the staff at the Coordinating Board to administer the Early Childhood Care Provider Student Loan Repayment Program. The new rules will also be used by applicants for funding to determine if they qualify and to give them the requirements of participating in the program.

The new rules are adopted on an emergency basis under Texas Education Code, §61.877.

§21.465. Purpose.

The purpose of the Early Childhood Care Provider Student Loan Repayment Program is to recruit and retain qualified child-care providers who serve in licensed Texas child-care facilities and whose duties consist primarily of providing child care or education to children less than four years old.

§21.466. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Child-care facility–A child-care facility licensed through the Division of Child Care Licensing of the Department of Protective and Regulatory Services.

(2) Default–A loan is considered in default if it is reduced to judgment.

(3) Early childhood care provider–A person who works 31 hours or more a week in a child-care facility, whether as an employee, owner, or volunteer, and whose duties consist primarily of providing child care or education to children less than four years of age.

(4) Early childhood degree or equivalent–An associate, baccalaureate, or graduate degree in early childhood development or the equivalent of early childhood development.

(5) Education loan–A loan made to an individual for the purpose of attending a public or independent institution of higher education.

(6) General academic teaching institution–As defined in the Texas Education Code, Section 61.003.

(7) Institution of higher education–A public or private and independent institution of higher education as defined in the Texas

Education Code, Section 61.003, and an out-of-state institution that is accredited by a recognized accrediting agency.

(8) Recognized accrediting agency–The Southern Association of Colleges and Schools and any other association or organization so designated by the board.

(9) Repayment(s)–Financial assistance for repaying education loans.

(10) Service obligation–A period of specified service in return for repayment assistance.

§21.467. Priorities of Application Acceptance and Selection Criteria.

(a) Acceptance of applicants shall depend on the availability of appropriated and other funds designated to support the program. Selection of applicants to participate in the program shall be based upon criteria approved by the commissioner in order to use limited funds effectively. The selection criteria may include, among other things, an assessment of an applicant's financial need.

(b) Renewal applicants shall be given priority over first-time applicants.

(c) In any year in which funds are insufficient for the number of eligible applicants, the board may encumber Early Childhood Care Provider Student Loan Repayment Funds.

§21.468. Eligible Education Loan.

An education loan eligible for repayment is one that:

(1) was obtained for purposes of attending any public or independent institution of higher education;

(2) is evidenced by a promissory note:

(A) for funds through a federal or state loan program for higher education,

(B) with language that clearly indicates that loan proceeds must be used for direct and indirect expenses at an eligible institution, or

(C) for consolidating education loans;

(3) does not entail a service obligation as a child care provider;

(4) shall not be repaid through a similar program administered by the state or federal government, another state or territory of the United States, or by a foreign country; and

(5) is not in default at the time of the early childhood care provider's application.

§21.469. Qualifications for Participation.

A person qualified for participation in the program must:

(1) be a United States citizen, national, or permanent resident of the United States;

(2) hold an associate, baccalaureate, or graduate degree in early childhood development or the equivalent of early childhood development from a public or independent institution of higher education accredited by a recognized accrediting agency;

(3) be employed as an early childhood care provider in a Texas child-care facility;

(4) apply for participation in the program and enter into an agreement with the board as an early childhood care provider; and

(5) sign a promissory note.

§21.470. Participation Agreement.

The participation agreement signed by the early childhood care provider shall specify the contractual conditions of any repayments provided to the early childhood care provider including, but not limited to, the following:

(1) the two-year service requirement must be completed to avoid repayment of funds to the board;

(2) the number of additional years of service for which an early childhood care provider may receive repayment assistance beyond the two-year service requirement;

(3) the difference in conditions between repayments made to the early childhood care provider during the required two-year service period and repayments made during any subsequent years of service;

(4) the beginning of the two-year service requirement effective the date of the agreement;

(5) the cancellation of the service obligation due to death or total and permanent disability;

(6) the early childhood care provider's promise to repay all funds paid to him or her by the board for service should he or she cease to provide child-care in a child-care facility any time during the required two-year service period;

(7) the effect of appropriations and availability of funds on repayment assistance;

(8) the manner in which loan repayments are made; and

(9) any other conditions necessary to fulfill the intent of the statute or to maintain the integrity of the program.

§21.471. Amount of Repayments and Limitations.

(a) The amount of repayments and the timeliness of repayments of education loans of a child-care provider are dependent upon appropriations and availability of funds. The board may delay repayments in times of insufficient funds.

(b) The total annual loan repayments may not exceed the lesser of the following:

(1) 15% of the total of all remaining scheduled payments of all education loans based upon a leveled payment schedule on the date of the participation agreement;

(2) the actual annual amount of the loan payments required by the note and holder of the education loans; or

(3) an amount set by the board equal to the maximum amount of resident tuition and required fees paid by a person enrolled as a full-time student at a general academic teaching institution in Texas for the most recent academic year, excluding summer school.

§21.472. Repayments During the Required Two-Year Service Period.

(a) The board may encumber repayment assistance funds for each qualified early childhood care provider for the required two-year service obligation.

(b) The board shall disburse repayments at the end of each year of service.

(c) The board shall issue a disclosure statement with each disbursement.

(d) Repayments shall be made copayable to the child-care provider and the holder of the education loan notes.

(e) The board shall provide the early childhood care provider a completed IRS 1099 form annually for repayments disbursed during the required two-year period.

§21.473. Repayments Beyond the Required Two-Year Service Period.

(a) To the extent funding is available, an early childhood care provider may qualify to receive repayments for three additional years of service in an eligible facility after completing the required two years of service.

(b) The eligible early childhood care provider must apply annually at the beginning of the twelve-month service period.

(c) To remain eligible, the early childhood care provider must provide twelve consecutive full months of eligible service.

(d) Repayments shall be made for services rendered in the preceding twelve months.

(e) Repayments are for services rendered and do not have to be repaid; consequently, no promissory note is required for repayments beyond the required two-year period of service.

(f) Repayments shall be made copayable to the early childhood care provider and the holder of the education loan notes.

(g) The board shall provide the early childhood care provider a completed IRS 1099 form annually.

§21.474. Terms of Early Childhood Care Provider Student Loans.

(a) Early childhood care providers receiving repayments during the required two- year service period who fail to complete service within the two years specified in the participation agreement must repay all repayments received according to the stipulations in the promissory note signed with the participation agreement.

(b) Early childhood care provider student loans may be reported to credit reporting agencies.

(c) Early childhood care provider student loan recipients are responsible for repaying not only the board but also holders of any outstanding education loan notes.

(d) The board may require a creditworthy payment guarantor or cosigner designated on the promissory note.

(e) The principal amount of all early childhood care provider student loans shall be repaid in installments in a period not to exceed five years.

(f) The interest on early childhood care provider student loans shall be simple interest, and the interest rate shall be a fixed rate set by the commissioner. Interest shall accrue from the date of the disbursement of the first repayment.

(g) The first payment shall be due at least 60 days after the date the early childhood care provider ceases to provide eligible services.

(h) The board shall provide a payment schedule calling for a minimum payment amount sufficient to repay all amounts included in the promissory note(s). The minimum annual amount required shall be $600 or the amount required to repay the remaining balance within five years, whichever is greater.

(i) A charge of 5% of the monthly payment or $5.00, whichever is less, shall be assessed for any payment received later than twenty days from the due date of such payment. Such charges shall be collected out of the first payments made in excess of the interest due with these payments.

(j) Periods of forbearance may be granted to recipients of the early childhood care provider student loans under certain documented circumstances as determined by the board. Periods of forbearance shall extend the five-year repayment period.

§21.475. Enforcement of Collection.

(a) When a recipient or payment guarantor/cosigner of a loan shall have failed to make as many as six monthly payments due in accordance with the promissory note(s), then the full amount of remaining principal, interest, and/or late charges shall immediately become due and payable. The recipient's and payment guarantor/cosigner's names and last known addresses and other information as requested by the commissioner shall be reported to the attorney general or any county or district attorney acting for him or her in the county of the recipient's residence or in Travis County, unless the attorney general shall find reasonable justification for delaying suit and shall advise the commissioner in writing.

(b) In all cases of default, the recipient and payment guarantor/cosigner shall be responsible for the payment of principal and all accrued charges, including interest, late charges, any collections costs incurred, court costs, and attorney fees.

§21.476. Provisions for Disability and Death.

The board may cancel a recipient's payment or service obligation if it determines:

(1) on the basis of a sworn affidavit of a qualified physician, that the recipient is unable to work because the recipient is permanently, totally disabled; or

(2) on the basis of a death certificate, that the recipient has died; in the case of death, the board may pursue collection from the recipient's estate if the debt has been reduced to judgment before the death of the recipient.

§21.477. Dissemination of Information.

The Board shall distribute rules and pertinent information about the Early Childhood Care Provider Student Loan Repayment Program to Texas institutions of higher education offering a degree program in early childhood development and equivalent degrees and to appropriate associations, facilities, and other entities.

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Subchapter R. Dental Education Loan Repayment Program

19 TAC §§21.560-21.566

The Texas Higher Education Coordinating Board adopts emergency new rules §§21.560-21.566 concerning Dental Education Loan Repayment Program. The new rules are to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are

being proposed for emergency action to implement House Bill 3544 passed by the 76th session of the Legislature. The rules will be used by the staff at the Coordinating Board to administer the program. The rules will also be used by applicants to the program to determine if they qualify and to determine the requirements for participating in the program.

The new rules are proposed under Texas Education Code, §61.908.

§21.560. Purpose.

The purpose of the Dental Education Loan Repayment Program is to recruit and retain qualified dentists to provide dental services in areas of the state that are underserved with respect to dental care.

§21.561. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Underserved Area with Respect to Dental Care – Federally designated Dental Health Professional Shortage Areas of Texas (Dental HPSAs), federally funded community health clinics in Texas, or other practices that provide services to populations that are critically underserved with respect to dental care.

(2) Service Period – A twelve-month period of service that qualifies an eligible dentist for an annual education loan repayment, beginning on the date the application is received by the Board or the date eligible service began, whichever is later.

(3) Program – The Dental Education Loan Repayment Program.

§ 21.562. Dissemination of Information.

The Board shall distribute rules and pertinent information about the Dental Education Loan Repayment Program to each dental school in the state and appropriate state agencies, professional associations, and other entities.

§21.563. Priorities of Application Acceptance.

Acceptance of applicants will depend upon the availability of appropriated funds and will be made on a first-come, first-served basis. Renewal applicants will be given priority over first-time applicants.

§21.564. Eligible Education Loan.

An education loan that is eligible for repayment is one that:

(1) was obtained through a lender for purposes of attending an eligible institution of higher education in Texas;

(2) is evidenced by a promissory note:

(A) for funds obtained through a federal or state loan program for higher education;

(B) with language that clearly indicates that loan proceeds must be used for direct and indirect expenses at an eligible institution; or

(C) for consolidating education loans; and

(3) does not entail a service obligation and is not being repaid through another loan repayment program.

§21.565. Eligible Dentist.

To be eligible for loan repayment, an applicant must:

(1) be licensed by the Texas State Board of Dental Examiners and have no disciplinary action against him/her;

(2) provide at least twelve consecutive months of general or pediatric dental services in an area that is underserved with respect to dental care; and

(3) submit a completed application to the board, agreeing to meet the conditions of loan repayment through the program.

§21.566. Repayment of Education Loans.

Eligible education loans of qualified dentists shall be repaid under the following conditions:

(1) the annual repayment(s) shall be made co-payable to the dentist and the holder(s) of the loan(s);

(2) the annual repayment(s) shall be made for up to five years upon the dentist's completion of each twelve-month service period;

(3) the $10,000 annual repayment amount shall be based on full-time eligible services;

(4) pro-rated loan repayment can be made based on service in an eligible area that is less than full-time during the twelve month period;

(5) contingent upon availability of funds and the applicant's having met all program requirements at the end of the service period, prior conditional approval shall be communicated to eligible dentists; and

(6) the commissioner may determine award amounts providing incentives for continuous service and service in the most underserved areas.

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Subchapter S. Border County Doctoral Faculty Education Loan Repayment Program

19 TAC §§21.590-21.596

The Texas Higher Education Coordinating Board adopts emergency new rules §§21.590-21.596, concerning Border County Doctoral Faculty Education Loan Repayment Program. The new rules are to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action to implement the Boarder County Doctoral Faculty Education Loan Repayment Program that was passed as part of House Bill 713 by the 76th session of the Legislature. The new rules will be used by the staff at the Coordinating Board to administer the Boarder County Doctoral Faculty Education Loan Repayment Program. The new rules will also be used by faculty to determine if they qualify for the program and the requirements of participating in the program.

The new rules are proposed under Texas Education Code, §61.708.

§21.590. Purpose.
The purpose of the Border County Doctoral Faculty Education Loan Repayment Program is to recruit and retain persons holding a doctoral degree to become and/or remain full-time faculty with instructional duties in Texas institutions of higher education located in counties that border Mexico.

§21.591. Definitions.
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Institution of Higher Education – A public or private and independent institution as defined in the Texas Education Code, Section 61.003, and an out-of-state institution of higher education that is accredited by a recognized accrediting agency.

(2) Recognized Accrediting Agency – The Southern Association of Colleges and Schools and any other association or organization so designated by the board.

(3) Student Loan in Default – Student loan debt that has been reduced to a judgment.

(4) Service Period – A twelve-month period of service that qualifies an eligible doctoral faculty member for an annual education loan repayment.

(5) Program – The Border County Doctoral Faculty Education Loan Repayment Program.

§ 21.592. Dissemination of Information.
The Board shall distribute rules and pertinent information about the Border County Doctoral Faculty Education Loan Repayment Program to the personnel office at each institution of higher education located in a Texas county that borders Mexico, appropriate professional associations, and other entitie.

§21.593. Priorities of Application Acceptance.
Acceptance of applicants will depend upon the availability of appropriated funds. Renewal applicants will be given priority over first-time applicants. Prior conditional approval shall be communicated to eligible faculty, contingent upon availability of funds and the applicant's having met all program requirements at the end of the service period.

§21.594. Eligible Education Loan.
An education loan that is eligible for repayment is one that:

(1) was obtained through a lender for the purpose of attending an eligible institution of higher education;

(2) is evidenced by a promissory note:

(A) for funds obtained through a federal or state loan program for higher education;

(B) with language that clearly indicates that loan proceeds must be used for direct and indirect expenses at an eligible institution; or

(C) for consolidating education loan;

(3) is not in default at the time the application is received by the board; and

(4) does not entail a service obligation.

§ 21.595. Eligible Faculty.
To be eligible for participation in the program, an applicant must:

(1) have received a doctoral degree on or after September 1, 1994, from an institution of higher education;

(2) be employed as a full-time faculty member with instructional duties in an institution of higher education that is located in a county that borders Mexico; and

(3) submit a completed application to the board, agreeing to meet the conditions of loan repayment through the program.

§21.596. Repayment of Education Loans.
Eligible education loans of qualified faculty members shall be repaid under the following conditions:

(1) the annual repayment(s) shall be made co-payable to the faculty member and the holder(s) of the loan(s);

(2) the annual repayment(s) shall be made upon the faculty member's completion of the twelve-month service period which began on the date the application was received by the Board or the date employment as eligible faculty began, whichever is later; and

(3) the maximum annual loan repayment amount shall be $5,000.

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Chapter 22. Grant and Scholarship Programs

Subchapter L. Toward Excellence, Access and Success (Texas) Grant Programs

19 TAC §§22.225-22.233

The Texas Higher Education Coordinating Board adopts on an emergency basis the new §§22.225-22.233 concerning Toward Excellence, Access, and Success (Texas) Grant Program.

The new rules are adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action to implement the new grant program, Toward Excellence, Access & Success, for college students. The program was created by House Bill 713 which was passed during the 76th session of the Texas Legislature. The new rules will be used by the financial aid offices at the colleges and universities in making the grant awards to the students.

The new rules are adopted on an emergency basis under Texas Education Code, §56.303.

§22.225. Purpose.
The purpose of this program is to provide grants of money to enable eligible students to attend public and private institutions of higher education in this state.

§22.226. Definitions.
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Encumber funds (for the TEXAS Grant Program)–To commit specific award amounts to specific students, documented by a report submitted to the Board, which includes at a minimum, a list of student recipient social security numbers, number of hours taken and dollar amounts awarded.

(2) Enrolled for at least a three-quarter time basis–The equivalent of nine semester credit hours in a regular semester.

(3) Entering undergraduate–A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during concurrent enrollment in high school and courses for which the student received credit through examination.

(4) Fifth-year certification student–a student at an approved institution enrolled in a fifth-year educator program.

(5) Initial award–The grant award made in the first semester in which a student is eligible.

(6) Recommended or advanced high school curriculum–The curriculum specified in the Texas Education Code, §28.002 or §28.025.

§22.227. Eligible Institutions.

(a) Eligible institutions include institutions of higher education and private or independent institutions of higher education as defined in the Texas Education Code, Chapter 61.003 of which meet the requirements outlined in Chapter 22, Subchapter A, §22.4 of this title (relating to General Provisions for all Grant and Scholarship Programs Described in this Chapter) for grant and scholarship programs as well as the reporting requirements outlined below.

(b) Reporting.

(1) Requirements/Deadlines. All institutions participating in the TEXAS Grant Program must meet board reporting requirements in a timely fashion. Such reporting requirements may include reports specific to allocation and reallocation of grant funds (including the Financial Aid Database Report), as well as progress and year-end reports of program activities.

(2) Penalties. If a progress report is postmarked up to a week late, the institution will be ineligible to receive additional funding through the reallocation occurring at that time. For each progress report postmarked more than a week late, the institution will be penalized 5% of its allocation of funds for initial awards in the following year. If the year-end report is postmarked up to a week late, the institution will be penalized 5% of its allocation of funds for initial awards in the following year. If it is postmarked more than a week late, the institution will be penalized 10% of its allocation for initial awards in the following year. More severe penalties can be assessed if any report is received by the board more than one month after its due date. The maximum penalty for a single year is 30% of the school's initial fund allocation. If penalties are invoked two years in a row, the institution may be penalized an additional 20%.

(3) Appeals. When the board determines a penalty is appropriate, it will first contact the Program Officer by telephone or e-mail and then follow up with a written notification, sent through certified mail. The Program Officer will have three weeks from the time he or she receives the written notice to submit a written response and appeal the board's decision.

§22.228. Eligible Students.

(a) To receive an initial award through the TEXAS Grant Program, a student must:

(1) be a resident of Texas;

(2) show financial need;

(3) have applied for any available financial aid assistance;

(4) be enrolled, unless approved under §22.229 of this title (relating to Hardship Provisions), at least three-quarter time in an undergraduate degree or certificate program at an eligible institution;

(5) not have been granted a baccalaureate degree;

(6) meet one of the two following conditions:

(A) be a graduate of a public or accredited private high school in this state not earlier than the 1998-99 school year; having completed the recommended or advanced high school curriculum established under the Texas Education Code, §28.002 or §28.025, or its equivalent (except as indicated in paragraph (7) of this subsection), and enroll as an entering undergraduate student not later than the end of the 16th month after the month of high school graduation; or

(B) have received an associate degree from an eligible institution no earlier than May 1, 2001, and re-enroll not later than the end of the 12th month after the month the person receives an associate degree from an eligible institution;

(7) if a graduate of a public high school in a school district certified not to offer all the courses necessary to complete all parts of the recommended or advanced high school curriculum, have completed all courses at the high school offered toward the completion of such a curriculum and enroll in an eligible institution not later than the end of the 16th month after the month of high school graduation; and

(8) if a graduate of an accredited private high school, present an official transcript or diploma that includes information indicating that the student has completed or is on schedule to complete the equivalent of the recommended or advanced high school curriculum.

(b) To receive a continuation award through the TEXAS Grant Program, a student must:

(1) have previously received an initial award through this program;

(2) show financial need;

(3) unless approved under §22.229 of this title for hardship provisions be enrolled at least three-quarter time;

(4) be enrolled in an undergraduate degree or certificate program at an eligible institution unless enrolled as a fifth-year certification student in a five-year educator certification program and receiving a Teach for Texas Grant as provided in Chapter 21, Subchapter N of this title (relating to Teach for Texas Conditional Grant Program);

(5) not have been granted a baccalaureate degree; and

(6) make satisfactory academic progress towards an undergraduate degree or certificate, which requires:

(A) in the person's first academic year that he or she meet the satisfactory academic progress requirements as indicated by the financial aid office of his or her institution; and

(B) in subsequent years, completion of at least 75% of the hours attempted in the student's most recent academic year, and maintenance of an overall grade point average of at least 2.5 on a four point scale or its equivalent;

(7) have received a TEXAS grant for no more than 150 semester credit hours or the equivalent; and

(8) if already awarded an undergraduate certificate or associate degree while receiving a TEXAS grant, enroll in a program leading to a higher-level undergraduate degree not later than the end of the 12th month after the month the person receives the certificate or degree.

(c) A person's eligibility for a TEXAS grant ends six years from the start of the semester or term in which the student received his or her initial award of a TEXAS grant.

(d) A person is not eligible to receive an initial or continuation TEXAS grant if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Health and Safety Code, Chapter 481, unless the person has met the other applicable eligibility requirements under this subchapter and has:

(1) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or

(2) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a TEXAS grant.

(e) If a person fails to meet any of the requirements for receiving a continuation award as outlined in subsection (b) of this section, after completion of any year, the person may not receive a TEXAS grant until he or she completes courses while not receiving a TEXAS grant and meets all the requirements of subsection (b) of this section, as of the end of that period of enrollment.

§22.229. Hardship Provisions.

(a) In the event of a hardship or for other good cause, the Program Officer at an eligible institution may allow an otherwise eligible person to receive a TEXAS grant while enrolled for an equivalent of less than three-quarter time. Such conditions are not limited to, but include:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; or

(3) the requirement of fewer than nine hours to complete one's degree plan.

(b) Under no circumstances, other than fewer hours required for graduation, may a person enrolled less than half time receive a TEXAS grant.

§22.230. Priorities in Funding.

If appropriations for the TEXAS Grant Program are insufficient to allow awards to all eligible students, the following priorities will be followed by the board in the use of funds:

(1) continuation awards through the TEXAS Grant Program; and

(2) initial awards through the TEXAS Grant Program.

§22.231. Priority in Awards to Students.

In determining who should receive a TEXAS grant, an institution shall give highest priority to students who demonstrate the greatest financial need at the time the award is made.

§22.232. Awards and Adjustments.

(a) Allocations and Reallocations. Unless otherwise indicated, institutions will have until an established deadline each year to encumber all funds allocated to their students. As of that date, unencumbered funds are available for reallocation to students at other institutions on a first come/first served basis.

(b) Disbursement of Funds to Institutions. At the beginning of each fall term, the board shall forward to each participating institution a portion of its preliminary allocation of funds for that year. Further disbursements to institutions will be made as appropriate for the balance of the institution's preliminary allocation and any reallocated funds.

(c) Use of Grant Funds. A person receiving a TEXAS grant may use the money to pay any usual and customary cost of attendance at an institution of higher education incurred by the student. The institution may disburse all or part of the proceeds of a TEXAS grant to an eligible person only if the tuition and required fees incurred by the person at the institution have been paid.

(d) Amount of Grant.

(1) The maximum amount that may be received in a given semester or term by a student through the TEXAS Grant Program is an amount equal to the average tuition and required fees charged students enrolled in similar institutions for 12 semester credit hours or their equivalent, prorated for more- or less-than-full-time enrollments. The maximum award for recipients enrolled at eligible private or independent institutions is based on the average tuition and required fees at public universities. The maximum award for students enrolled in public community colleges is based on the average in-district tuition and fee charges for such institutions. The board shall determine and announce award maximum amounts prior to the start of each fiscal year.

(2) For students enrolled in eligible independent institutions, the amount of the TEXAS grant, when combined with the amount received through the Tuition Equalization Grant Program (the Texas Education Code, Chapter 61.221) may not exceed the maximum award for which the student is eligible through the Tuition Equalization Grant Program.

(3) An eligible public institution may not charge a person receiving a TEXAS grant through that institution, an amount of tuition and required fees in excess of the amount of the TEXAS grant received by the person. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a TEXAS grant. If an institution's tuition and fee charges exceed the TEXAS grant amount, it may address the shortfall in one of two ways:

(A) It may use other available sources of financial aid, other than a loan or a Pell grant, to cover any difference in the amount of a TEXAS grant and the student's actual amount of tuition and required fees at the institution; or

(B) it may waive the excess charges for the student. However, if a waiver is used, the institution may not report the recipient's tuition and fees in a way that would increase the general revenue appropriations to the institution.

(e) Late Disbursements. For a student to receive a disbursement after the end of his/her period of enrollment, the program officer must document in the student's file that

(1) the student has completed the award period with satisfactory academic progress;

(2) the student has an outstanding balance at the school, or on a student loan or other education-related debt for the qualifying award period; and

(3) the institution will apply the award toward that outstanding balance or debt.

(f) Packaging with Other Awards. The amount of a TEXAS grant may not be reduced by any gift aid for which the person is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the total cost of attendance at an eligible institution.

§22.233. Dissemination of Information and Rules.

The board and its advisory committee is responsible for publishing and disseminating general information and program rules for the program described in this subchapter. The coordinating board shall distribute to each eligible institution and to each school district a copy of the rules adopted under this subchapter.

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TITLE 22. EXAMINING BOARDS

Part XVIII. Texas State Board of Podiatric Medical Examiners

Chapter 379. Fees and License Renewal

22 TAC §379.1

The Texas State Board of Podiatric Medical Examiners adopts an emergency amendment to §379.1 concerning Fees.

The Board must adopt this on an emergency basis due to the fact that they must raise the renewal fee to cover costs mandated by the 2000-2001 Appropriations Bill. The bill states that we must raise additional revenue above and beyond what we already collect in order to receive that funding. The renewal for the Board begins in September and ends November 1st. We must have that increase in effect in order to raise the needed revenue in fiscal year 2000.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 4568(j), which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatric medicine, the laws of this state, or of the United States; to govern its proceedings and activities, the regulation of the practice of podiatric medicine, and the enforcement of the law regulating the practice of podiatric medicine.

§379.1. Fees.

(a) (No change.)

(b) Fees are as follows:

(1) Examination–$250

(2) Re-Examination–$250

(3) Temporary License–$125

(4) Provisional License–$125

(5) Class II Temporary License–$ 50

(6) Temporary Faculty License–$ 40

(7) [~~(5)~~] Renewal–$325

(8) [~~(6)~~] Renewal Penalty–as specified in Texas Civil Statutes, Article 4571, §1(e)-(h)

(9) [~~(7)~~] Non-certified podiatric technician initial registration–$25

(10) [~~(8)~~] Non-certified podiatric technician renewal–$25

(11) [~~(9)~~] Duplicate License–$25

(12) Copies of Public Records–The charges to any person requesting copies of any public record of the Board will be the charge established by the General Services Commission. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.

(13) Statute and Rule Notebook–provided at cost to the agency

(14) [~~(10)~~] Copy of CME printout–$5.00

(15) [~~(11)~~] Duplicate Certificate–$10

Filed with the Office of the Secretary of State, on August 19, 1999.

TRD-9905286
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Effective date: September 1, 1999
Expiration date: December 30, 1999
For further information, please call: (512) 305-7000

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Part XXIII. Texas Real Estate Commission

Chapter 537. Professional Agreements and Standards Contracts

22 TAC §§537.11, 537.43, 537.44

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to §§537.11, 537.43 and 537.44, concerning standard contract forms. These actions adopt by reference a contract addendum and a resale certificate which may be used in a real estate transaction when ownership of a home in a residential subdivision includes mandatory membership in an owners' association.

TREC has determined that adoption of the amendments on an emergency basis is necessary to prevent disruption in residential real estate transactions and possible financial loss if the existing forms adopted by TREC are not revised immediately to be consistent with new Chapter 207 of the Texas Property Code which becomes effective September 1, 1999. TREC finds that these circumstances constitute an imminent peril to the public welfare requiring adoption of the amendments on fewer than 30 days' notice. TREC also is proposing adoption of the amendments on a permanent basis in connection with a

proposal to adopt other revised forms by reference. Copies of the forms are available from TREC by mail or by accessing TREC's web site at http://www.trec.state.tx.us.

The amendment to §537.11 renumbers the revised forms as they appear in a list of forms promulgated by TREC.

The amendment to §537.43 adopts by reference a revised Addendum for Property Subject to Mandatory Membership in an Owners' Association. The form is used when the parties to the contract wish to address whether a resale certificate or other information about the owners' association is to be provided to the buyer. The form has been revised to make it consistent with new Chapter 207, Texas Property Code, enacted by the 76th Legislature (1999), effective September 1, 1999 ("the new law"). Under the new law, an owners' association is required to provide subdivision information to an owner upon the owner's written request. This information consists of restrictions applying to the subdivision, the bylaws and rules of the owners' association, and a resale certificate with specific information about the association. The TREC addendum has been modified to remove requirements that the seller provide the buyer with a copy of the association's articles of incorporation and income and expense statement, because the new law does not require the association to provide that information to the seller. Other information, including the operating budget and certificate of insurance, have been deleted as optional selections in the addendum, because the new law requires that information to be provided in the new statutory resale certificate,

The amendment to §537.44 adopts by reference a revised resale certificate, re- captioned "Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in an Owners' Association." The form has been modified to be consistent with the content required by the new law, specifically, to eliminate an explanation of any suits pending against the association and disclosure of any material physical defect known to the governing board of the association. The resale certificate required by the new law requires disclosure only of the style and cause number of pending suits and does not address material physical defects. The form also has been revised to add information which had not been included in the prior TREC form, specifically, a statement whether the restrictions allow foreclosure of a property owners' association's lien on the owner's property for failure to pay assessments.

These amendments are adopted on an emergency basis to ensure that the forms used by real estate licensees or made available by the licensees for use by an owners' association are consistent with the provisions of the new law. Because the new law provides remedies against an owners' association that fails to provide specific information upon the written request of an owner, it is imperative that the contract forms and resale certificate promulgated by TREC track the provisions of the new law. Unless the TREC forms are made available immediately, disputes could arise between the parties to contracts as to the seller's compliance with the new law.

The amendments are being adopted on an emergency basis under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§537.11. Use of Standard Contract Forms.

(a) Standard Contract Form TREC No. 9-3 is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC No. 10-2 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 11-3 is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC No. 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC No. 13-1 is promulgated for use as an addendum concerning new home insulation to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 15-2 is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC No. 16-2 is promulgated for use as a residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-3 is promulgated for use in the resale of residential real estate where there is all cash or owner financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC No. 21-3 is promulgated for use in the resale of residential real estate where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC No. 23-2 is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC No. 24-2 is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC No. 25-2 is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC No. 26-2 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC No. 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC No. 29-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where an abstract of title is to be furnished. Standard Contract Form TREC No. 30-1 is promulgated for use in the resale of a residential condominium unit where there is all cash or seller financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC No. 31-1 is promulgated for use in the resale of a residential condominium unit where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC No. 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC No. 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form No. 34-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. Standard Contract Form TREC No. 35-1 is promulgated for use as an addendum to be added to promulgated forms of contracts as an agreement for mediation. Standard Contract Form TREC Form No. 36-1 [~~36-0~~] is promulgated for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 37-1 [~~37-0~~] is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 38-0 is promulgated for use as a notice of termination of contract. Standard Contract Form TREC Form No. 39-0 is promulgated for use as an amendment to promulgated forms of contracts.

(b)-(j) (No change.)

§537.43. Standard Contract Form TREC No. 36-1 [~~36-0~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. [~~Number~~] 36-1 [~~36-0~~] approved by the Texas Real Estate Commission in 1999 [~~1995~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.44. Standard Contract Form TREC No. 37-1 [~~37-0~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. [~~Number~~] 37-1 [~~37-0~~] approved by the Texas Real Estate Commission in 1999 [~~1995~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

Filed with the Office of the Secretary of State, on August 17, 1999.

TRD-9905208
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Effective date: September 1, 1999
Expiration date: December 30, 1999
For further information, please call: (512) 465-3900

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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 17. Marketing and Promotion Division

The Texas Department of Agriculture (the department) proposes amendments to §§17.51-17.56, new §17.57 and §17.58, and the repeal of §17.60, concerning application and registration to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas and GO TEXAN and Design mark and use of the Go Texan/Nativescape mark.

The purpose of the amendments is to incorporate new provisions for use of the GO TEXAN and Design mark into existing rules. In addition, new and amended definitions and amendments to §17.51 and §17.52 are proposed which will expand the types of agricultural raw and processed products and their qualifications for use of the GO TEXAN and Design mark. The term "GO TEXAN and Design mark" is substituted throughout the rules for the term "Go Texan promotional mark". In addition, §17.52(g) has been amended to change the date of registration from January 31 to March 31 following the year of issuance. New §17.57, regarding Associate GO TEXAN members is proposed to provide a marketing program that allows participation and permission to use GO TEXAN and Design mark by retailers, media and printers. New §17.58 regarding the GO TEXAN Beef Program, will establish a marketing program that adds value to Texas' fresh 100% beef products and certain processed 100% beef products. New §17.58 includes eligibility requirements for use of the GO TEXAN and Design mark by beef producers, beef slaughter facilities, beef processing facilities and feedlots. Section 17.60 is proposed for repeal in order for the department to develop other programs to promote the use of native Texas nursery products in landscaping.

Rona Houston, Deputy Assistant Commissioner for Marketing and Promotion, has determined that for the first five-year period that the proposed sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Although the department is expanding the GO TEXAN program eligibility requirements to include more products, thereby providing for a potential increase in program fee revenue, the department is unable to determine if such an increase will occur because the program membership is voluntary and it is not possible to determine the number of new businesses meeting eligibility requirements and/or interest of businesses in general to join the program.

Ms. Houston has also determined that for the first five years that the proposal is in effect the public benefit resulting from the enforcing or administering the sections will be increased awareness of and sales of Texas agricultural products due to the expansion of the department's promotional marketing programs, and increased cost efficiencies as a result of consolidation of current membership programs into one marketing program that encompasses all agricultural products previously served by a number of programs. The effect on small and large business for the first five-year period will be an increase of $25 in the annual registration fee for GO TEXAN beef program members. In addition, there may be additional costs related to meeting eligibility requirements to persons or entities seeking to register to use the GO TEXAN certification mark on their beef products. It is not possible to estimate a cost for meeting eligibility requirement because it will depend on many factors relating to a beef production operation. The effect on new members to the new GO TEXAN promotional program will be a registration fee in the amount of $25 per year.

Comments may be submitted to Rona Houston, Deputy Assistant Commissioner for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

Subchapter C. TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, and GO TEXAN and Design Marks

4 TAC §§17.51-17.58

The amendments and new sections are proposed under the Texas Agriculture Code §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code; §12.017, which authorizes the department to regulate the use of the term "Texas Agricultural Product" by rule; and, §12.0175 which authorizes the department to establish programs to pro-

mote products grown in Texas and products made from ingredients grown in Texas and to charge a membership fee for those programs not to exceed $50.

The code affected by the proposal will be the Texas Agriculture Code, Chapter 12 and the Texas Agriculture Code, Chapter 46, as enacted by House Bill 2719, 76th Legislature, 1999.

§17.51. Definitions.
The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Associate GO TEXAN members/licensees- persons who apply and are granted limited use of the mark by the department for assistance in the promotion and implementation of the GO TEXAN program.

(2) [~~(1)~~] Commissioner–Commissioner of Agriculture [~~agriculture~~], Texas Department of Agriculture.

(3) [~~(2)~~] Department–The Texas Department of Agriculture.

(4) Food-Agricultural products, excluding fresh meats, produced or processed in Texas for human consumption.

(5) GO TEXAN and Design mark–The following mark being a certification mark pending final registration approval with the United States Patent and Trademark Office and also with the Texas Secretary of State's office by the department. GO TEXAN and Design is a certification mark of the Texas Department of Agriculture.
Figure: 4 TAC §17.51(5)

(6) Horticulture products–Nursery, floral and greenhouse plants or plant products produced in Texas from seeds, rootings, cuttings, tissue cultures, seedlings or other propagation materials. Non-Texas plants being produced for such a period during which they are transplanted or increased in plant size and volume of container. Texas and non-Texas produced plant-based horticulture products processed in Texas.

(7) Livestock feed, feed supplements and pet food-Agricultural products produced or processed in Texas for animal consumption.

(8) [~~(3)~~] Natural fibers–Fibers which have been produced from Texas crops or shorn from Texas livestock, and which are used in textiles, apparel, and other goods. The term "natural fibers" also includes leather made from the hides of animals and reptiles.

(9) Natural woods–Forestry products produced from Texas hardwood and softwood timber and may include, but not be limited to, furniture, home furnishings, building construction materials, pulp and paper.

(10) [~~(4)~~] Naturally Texas mark–A mark bearing the icons (or symbols) representative of leather, wool, mohair, and cotton and bearing the words "Naturally TEXAS," such mark being a certification mark registered with the United States Patent and Trademark Office, and also being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51(10)
[~~Figure: 4 TAC §17.51(4)~~]

(11) [~~(5)~~] Person–An individual, firm, partnership, corporation, governmental entity, or association of individuals.

(12) [~~(6)~~] Processed food product-Non-Texas agricultural food product which has [~~Having~~] undergone a value-added procedure in Texas to change or add to its [~~the~~] physical characteristics, [~~of an agricultural product~~] including, but not limited to, cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, distilling, eviscerating, preserving, packaging, dehydrating, washing, culling or freezing. For purposes of this subchapter [~~these sections~~], the department shall have the sole discretion to determine [~~in determining~~] whether a product qualifies as being a processed food product. One hundred percent fresh beef and processed 100% beef products must comply with the requirements of §17.58 of this title (relating to GO TEXAN Beef Program).

(13) Processed natural fiber or natural wood product-Non-Texas raw, natural fiber or natural wood which has undergone mechanical or physical changes in Texas resulting in a finished, distinct product. For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being a processed natural fiber and wood product.

(14) [~~(7)~~] Produced in Texas-An agricultural [~~A~~] product is produced in Texas if:

(A) the agricultural product is [~~the commodity or commodities of which it is composed are~~] grown, raised, nurtured, sown, or cultivated within the state; or

(B) the agricultural product has been altered by a mechanical or physical value-added procedure in Texas to change or add to its physical characteristics [~~is processed within the state in a manner which substantially changes its form~~].

(C) Products produced in Texas, but processed out of Texas do not meet GO TEXAN program requirements.

(15) [~~(8)~~] Producer-Any person who: [~~produces products grown in the State of Texas or made from ingredients grown in the State of Texas.~~]

(A) Produces agricultural product(s) grown, raised, nurtured, sown, or cultivated in the State of Texas; or

(B) Produces Texas processed agricultural product(s).

(C) Produces Texas product(s) that is/are not processed outside of Texas.

(16) Texas processed agricultural product- Non-Texas agricultural product, excluding processed food product and processed natural wood and natural fiber product, which has undergone a value added procedure in Texas that changes or adds to its physical characteristics. For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being a Texas processed agricultural product.

(17) [~~(9)~~] TAP mark–The term "Texas Agricultural Product" or the following mark embracing the same, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51(17)
[~~Figure: 4 TAC §17.51(9)~~]

(18) [~~(10)~~] Taste of Texas mark–A flag-shaped mark bearing the words "Taste of Texas," so colored as to model closely the flag of the State of Texas, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51(18)
[~~Figure: 4 TAC §17.51(10)~~]

(19) Texas agricultural product–An agricultural, horticultural, viticultural, or vegetable product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to the product in this state, including:

(A) bees;

(B) honey;

(C) fish or other seafood;

(D) a forestry product;

(E) livestock or a livestock product;

(F) planting seed; or

(G) poultry or poultry products.

(20) [~~(11)~~] Texas Grown mark–A vertical and rectangular mark which features a native Texas mountain laurel branch in bloom over an outline of the state of Texas with the word "Texas" at the top and the word "Grown" at the bottom of the rectangle, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51(20)
[~~Figure: 4 TAC §17.51(11)~~]

(21) [~~(12)~~] Vintage Texas mark–A vertical, rectangular mark consisting of a cluster of six grapes loosely forming a triangle and topped by a single grape leaf, all centered in the middle of a five-pointed star. Coming from behind the top center point of the star is a short curlicue line representing a grapevine. One horizontal line intersects with the tip of the center point of the star, and a parallel horizontal line intersects the two bottom points of the star. The word "VINTAGE" appears above the top parallel line, and the word "TEXAS" appears below the bottom parallel line, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51(21)
[~~Figure: 4 TAC §17.51(12)~~]

~~[(13) Go Texan promotional mark The following mark being a certification mark registered with the United States Patent and Trademark Office and also being registered with the Secretary of State's office by the department. Go Texan and design is a certification mark of the Texas Department of Agriculture.]~~
~~[Figure: 4 TAC §17.51(13)]~~

§17.52. Application for Registration To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan Promotional~~] Mark.

(a) No person shall use, employ, adopt, or utilize the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan promotional~~] mark, unless prior application for registration or licensing has been made to the department and permission to make such use, employment, adoption, or utilization has been granted.

(b) Unless permission is otherwise granted by the department , the GO TEXAN and Design mark may only be used by registrants and licensees to certify and promote the following Texas agricultural products:

(1) [~~the TAP promotional mark may only be used by TAP program members. The TAP program is a program established by the department to promote~~] agricultural products produced in Texas;

(2) [~~the Taste of Texas promotional mark may only be utilized by Taste of Texas program members. The Taste of Texas program is a program established by the department to promote the retail sale and wholesale of~~] agricultural food products processed in Texas, regardless of origin, and unprocessed agricultural food products grown in Texas. A food service company, including a restaurant, is not eligible for membership unless it processes a packaged product for resale, in which case, the mark may only be used to promote the specific program-eligible products. Food service companies or restaurants may not use the mark in any general fashion to promote the business or its services.

(3) [~~the Vintage Texas promotional mark may only be utilized by Vintage Texas program members. The Vintage Texas program is a program established by the department to promote~~] wine which is:

(A) at least 75% by volume, derived from grapes grown and fermented in the State of Texas; and

(B) fully produced and finished within the State of Texas.

(4) [~~The Texas Grown promotional mark may only be utilized by Texas Grown program members. The Texas Grown program is a program established by the department to promote~~] Texas- grown nursery, floral, and forestry products.

(5) [~~The Naturally Texas promotional mark may only be utilized by Naturally Texas program members. The Naturally Texas program is a program established by the department to promote~~] leather, textile, or apparel products approved by the commissioner as being:

(A) composed of 50% or greater natural fibers derived from crops or livestock grown or raised within the State of Texas, the identity of the fibers having been preserved throughout processing so as to be verifiable by satisfactory documentation as having originated in Texas; or

(B) composed of 50% or greater natural fibers, regardless of where grown or raised, which have been processed into leather, textile, or apparel products within the State of Texas in a manner which substantially changes their form, and, if composed of natural fibers derived from crops or livestock grown or raised outside the State of Texas, the natural fibers must be of a type commercially produced within the State of Texas.

(6) Horticulture product(s). [~~The Go Texan promotional mark may only be utilized by Taste of Texas, Vintage Texas, Texas Grown and Naturally Texas program members or others meeting requirements as prescribed by this section.~~]

(7) Lamb or goat meat(s). In order to be certified as a "GO TEXAN" lamb or goat meat(s), lamb or goat meat(s) must meet the following requirements.

(A) meat(s) shall be from lamb or goat slaughtered in Texas; or

(B) meat(s) shall be from lamb or goat slaughtered and fabricated in Texas;

(C) for purposes of this paragraph, "fabricated" shall be defined as the process of taking a carcass and cutting the carcass into wholesale or retail cuts of meat.

(8) Livestock feed(s), feed supplement(s) and pet food(s).

(9) Oysters in their raw form or processed form.

(10) Natural fiber(s).

(11) Natural wood(s).

(12) Processed food product(s).

(13) Processed natural fiber and natural wood product(s).

(14) Texas processed agricultural product(s).

(c) The Texas Agricultural Product, Taste of Texas, Vintage Texas, Texas Grown, and Naturally Texas marks shall only be used by program members to identify products meeting the requirements for membership for those programs prior to May 23, 1999 as follows:

(1) for the TAP mark, for products identified in paragraph (b)(1) of this section;

(2) for the Taste of Texas mark, for products identified in paragraph (b)(2) of this section;

(3) for the Vintage Texas mark, for products identified in paragraph (b)(3) of this section;

(4) for the Texas Grown mark, for products identified in paragraph (b)(4) of this section; or

(5) for the Naturally Texas mark, for products identified in paragraph (b)(5) of this section.

(d) [~~(c)~~] Applications submitted under this section shall be made in writing on a form prescribed by the department. Application forms may be obtained by contacting the Texas Department of Agriculture Marketing and Promotion [~~Agribusiness Development~~] Division at P.O. Box 12847, Austin, Texas 78711, phone (512) 463-7624.

(e) [~~(d)~~] Applications shall be submitted to the assistant commissioner for Marketing and Promotion [~~Agribusiness Development~~], Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(f) [~~(e)~~] If approved, applicants who are producers shall remit the required registration fee within 30 days of notification of approval. Pursuant to the Texas Agriculture Code Annotated, §12.0175, applicants, who are not producers and who meet the requirements of §17.57 of this title (relating to Associate GO TEXAN Members), shall not be required to pay a registration fee and may be granted an Associate GO TEXAN membership.

(g) [~~(f)~~] Upon receipt of the registration fee (if required), the department shall mail to the registrant or licensee a certificate of registration, which shall expire on March [~~January~~] 31 [~~of~~] following the year of issuance. The department shall also enclose copies of the mark, suitable for reproduction. If the certificate is for less than one full year, registration fees will be assessed on a pro rata basis.

(h) [~~(g)~~] Other than the use of the [~~promotional~~] mark, no registrant or licensee shall use any statement of affiliation or endorsement by the State of Texas or the department in the selling, advertising, marketing, packaging, or other commercial handling of TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN [~~Go Texan~~] products.

(i) [~~(h)~~] Registrants and licensees shall indemnify and hold harmless the commissioner, the State of Texas, and the department for any claims, losses, or damages arising out of or in connection with that person's advertising, marketing, packaging, manufacture, or other commercial handling of TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN [~~Go Texan~~] products.

(j) [~~(i)~~] Any permission under the certificate of registration granted to a registrant to use the mark shall be nonexclusive and nontransferable for the products listed in the application.

(k) [~~(j)~~] Registrants shall do nothing inconsistent with the ownership of the [~~promotional~~] mark in the department, and all use of the mark by any registrant shall inure to the benefit of and be on behalf of the department. Further the registrants shall not have any right, title, or interest in the [~~promotion~~] mark, other than the right to use the mark in accordance with the certificate of registration. Registrants must agree not to attack the title of the department to the mark, or attack the validity of the certificate of registration or the permission granted by the department.

(l) [~~(k)~~] The nature and quality of the goods sold by registrants in connection with the mark shall conform to any standards which may be set from time to time by the department. Registrants shall cooperate with the commissioner by permitting reasonable inspection of the registrant's operation and supplying the commissioner with specimens of use of the mark upon request.

(m) [~~(l)~~] Registrants and licensees shall comply with all applicable laws and regulations and obtain all appropriate governmental approval pertaining to the selling, advertising, marketing, packaging, manufacturing, or other commercial handling of the products covered by the certification of registration.

(n) [~~(m)~~] Registrants shall use the mark only in the form and manner, and with appropriate legends, as prescribed from time to time by the commissioner. Registrants shall affix on all product(s) bearing the mark the following legal notice: GO TEXAN and Design is a certification mark of the Texas Department of Agriculture.

(o) [~~(n)~~] The department shall have the sole right and discretion to bring infringement or unfair competition proceedings involving the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, GO TEXAN and Design or [~~Go Texan promotional~~] marks.

§17.53. Action on Application.

(a) The assistant commissioner for Marketing and Promotion, Texas Department of Agriculture, within 30 days of receipt of an application for registration or license to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan promotional~~] mark, shall make an initial determination of whether such registration permission shall be granted or denied, and forthwith notify the applicant in writing of his decision setting forth in detail the reasons for such grant or denial.

(b)-(c) (No change.)

§17.54. Denial of Application to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan promotional~~] Mark.

An application for registration or license to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan promotional~~] mark may be denied if:

(1) application is not made in compliance with §17.52 of this title (relating to Application for Permission To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan Promotional~~] mark;

(2)-(3) (No change.)

(4) the applicant has misused the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan promotional~~] mark prior to the date of application; or

(5) (No change.)

§17.55. Registration of Those Entitled To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan Promotional~~] Mark.

(a) The commissioner shall enroll in a register the names of all persons granted permission under these sections to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan promotional~~] mark. The register shall be available for public inspection during normal business hours in the offices of the Texas Department of Agriculture, 1700 North Congress Avenue, in Austin, Texas.

(b) Procedure for annual renewal of registration of persons authorized to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan promotional~~] mark.

(1) Between March [~~Except for calendar year 1999, between January~~] 1 and March [~~January~~] 31, annually, the department shall mail to each person previously registered or licensed to use the [~~TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or Go Texan~~] GO TEXAN and Design [~~promotional~~] mark a statement setting forth the amount due as an annual registration fee for producers. Non-producers shall be required to verify that they remain exempt from payment of registration fees.

(2)-(4) (No change.)

(c) An annual [~~Annual~~] registration fee of $25 [~~fees~~] for registration in the [~~use of the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas and Go Texan promotional~~] GO TEXAN program [~~mark~~] shall be paid to the department [~~in accordance with the following schedule:~~]

[~~(1) TAP promotional mark $25;~~]

[~~(2) Taste of Texas promotional mark $25;~~]

[~~(3) Texas Grown promotional mark $25;~~]

[~~(4) Vintage Texas promotional mark $25;~~]

[~~(5) Naturally Texas promotional mark $25~~]

[~~(6) Go Texan promotional mark $25~~] .

(d) Annual registration fees paid to the department for membership in the GO TEXAN program shall include the use of the TAP, Taste of Texas, Vintage Texas, Texas Grown or Naturally Texas [~~promotional~~] marks [~~may include the use of the Go Texan promotional mark~~] for members enrolled in those programs prior to May 23, 1999.

§17.56. Termination of Registration To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan Promotional~~] Mark.

(a) Registration to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan promotional~~] mark may be revoked at any time if the mark is misused.

(b) Misuse of the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan promotional~~] mark includes, but is not limited to:

(1)-(3) (No change.)

(c) Proceedings for the revocation of registration to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan promotional~~] mark shall be conducted in the manner provided for contested cases by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 1 of this title (relating to General Practice and Procedure).

(d) A proceeding for revocation of registration to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design [~~Go Texan promotional~~] mark shall not preclude the commissioner from pursuing any other remedies, including, where applicable, the penal and injunctive remedies provided for by law.

§17.57. Associate GO TEXAN Members.

(a) Statement of purpose; Applicability. The Associate GO TEXAN Member Program is established to provide a marketing program that allows persons interested in assisting the department with the promotion and implementation of the GO TEXAN program use of the Texas Department of Agriculture's GO TEXAN and Design mark only on promotional items that meet standards and rules. In addition to the certification of media outlets and retailers to use the GO TEXAN and Design mark in their efforts to promote the program, this section provides that printers may be certified as associate GO TEXAN members if they meet requirements of this section.

(b) Application process.

(1) Application to use the GO TEXAN and Design mark in accordance with this section, shall be made in the same manner as provided in §17.52 of this title (relating to Application for Registration To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design mark)

(2) Except as otherwise provided in this section, §§17.53-17.56 of this title, relating to requirements for membership in the general "GO TEXAN" program shall apply to entities certified under this section.

(c) Eligibility Requirements and Membership Categories.

(1) Eligibility requirements. All media entities, retailers and printers interested in assisting the department with the promotion and implementation of the GO TEXAN program may apply for Associate GO TEXAN membership.

(2) licensees granted Associate GO TEXAN membership, shall only use the mark for the limited purpose stated in the certificate of registration. Use of the mark by Associate GO TEXAN members is limited and use is subject to department rules.

(3) media- licensee's use of the mark is limited to promotion of the GO TEXAN program in print, television and radio mediums;

(4) retailer- licensee's use of the mark is limited to general promotion of GO TEXAN products as defined in §§17.51-52 of this title (relating to Definitions and Application for Registration To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design mark) in its retail locations;

(5) printer- licensee's use of the mark is limited to reproduction of the mark for use by program members on their products;

(d) Limited use restrictions.

(1) licensee shall be granted a limited, non-exclusive license to use the mark solely in conjunction with the reproduction, display, advertisement and promotion for which licensee has applied, within the United States, on the date(s) which licensee specified in the application;

(2) licensee shall furnish the department a sample of any material bearing the mark, including but not limited to all advertising, promotional, and display materials, at no charge, for the department's written approval prior to any use thereof;

(3) licensee's licensed use shall be of high standard;

(4) licensee shall affix on all items utilized in the licensed use, appropriate legal notices, as follows: GO TEXAN and Design is a certification mark of, and is used under license from, the Texas Department of Agriculture;

(5) licensee's license to use, shall not be construed to grant or assign any right, title or interest in or to the mark or the goodwill attached thereto;

(6) any and all use of the mark by registrant as allowed under program rules shall inure solely to the benefit of the department.

(e) Fees. Applicants shall not pay an annual fee to enroll in the "Associate GO TEXAN" member program.

§17.58. GO TEXAN Beef Program.

(a) Statement of Purpose; Applicability. The GO TEXAN Beef Program is established to provide a marketing program that adds value to Texas' fresh beef and certain processed beef products by allowing use of the Texas Department of Agriculture's GO TEXAN and Design mark only on products that meet important quality characteristics. In addition to the certification of beef producers to use the GO TEXAN and Design mark on their eligible beef products, this section provides that feed-yard operators, slaughter facilities, and processors may be certified as GO TEXAN members if they meet requirements of this section. This section shall apply only to 100 percent beef products that are either raw or processed, as defined in this section.

(b) Product Requirements and Membership Categories.

(1) Product requirements. The following 100 % beef products will be eligible for certification as a GO TEXAN 100% beef product:

(A) products that are either raw or processed as defined by this subparagraph. For purposes of this section, the word "processed" means a 100 percent beef product that has been altered from its raw state by the addition of seasonings or marinades or by being cooked using techniques indigenous to Texas' cooking cultures such as by BBQ, Tex-Mex, Southwestern cuisine, etc.;

(B) products that are of the following quality:

(i) products of Prime, Choice or Select quality as defined by the United States Department of Agriculture (USDA);

(ii) products of Yield Grades 1,2 or 3, as defined by the USDA;

(iii) products coming from carcasses with a maturity score in the "A" maturity range, as defined by USDA;

(iv) products coming from carcasses weighing less than 850 pounds; and

(v) products not coming from carcasses with dark cutting characteristics.

(C) products that have been slaughtered in a slaughter facility meeting requirements of paragraph (b)(2) of this subsection; and

(D) products processed by a facility meeting the requirements of paragraph (b)(3) of this subsection.

(2) Slaughter facilities. In order to be certified as a GO TEXAN slaughter facility, a facility including a beef packer or boxed beef supplier, must meet the following requirements:

(A) The facility must be located in Texas and must be inspected by the Texas Department of Health (TDH) or the (USDA).

(B) All cattle slaughtered by the facility for certification as a GO TEXAN 100% beef product must have been fed grain for a minimum of 100 days in a Texas feedyard.

(C) The facility shall employ practices to optimize palatability of beef cuts. Packers shall utilize the following practices:

(i) High voltage electrical stimulation along with a postmortem aging plan approved by the commissioner or a scientific panel appointed by the Commissioner; or

(ii) Other palatability-enhancing program that is validated with scientific data approved by the commissioner or a scientific panel appointed by the commissioner.

(D) The facility must submit an application to the department in accordance with this section.

(3) Processing facilities. In order to be certified as a "GO TEXAN" processing company, a processing company must meet the following requirements:

(A) The owner or operator of the processing facility must sign an affidavit confirming that raw supplies used will be procured only from plants located in Texas.

(i) In-state processors must use raw materials of 100 percent beef sourced back to a TDH or USDA inspected slaughter facility.

(ii) Out-of state processors must use raw materials of 100 percent beef sourced back to a raw product company enrolled in the GO TEXAN Beef Program in accordance with this section.

(B) The entity must submit an application to the department under this section, including the following:

(i) the name of proposed beef products;

(ii) the name of cut from which they come;

(iii) a sample of packaging or composite of proposed packaging;

(iv) a brief explanation of plans for use of the GO TEXAN and Design mark on the product and in any related advertising material;

(v) a description of preparation method; and

(vi) a list of current boxed beef supplier(s) for this product and plant number(s).

(4) Feedlots. In order to be certified as a "GO TEXAN" feedlot, a feedlot must meet the following requirements.

(A) The feedlot must be located in Texas.

(B) If feasible, the feedlot must feed Vitamin E to the cattle certified for slaughter as a "GO TEXAN" 100% beef product.

(C) The feedlot must participate in a beef safety and quality assurance program.

(D) The feedlot must submit an affidavit and application to the department in accordance with this section.

(c) Application process.

(1) Application to use the GO TEXAN and Design mark in accordance with this section, shall be made in the same manner as provided in §17.52 of this title (relating to Application to use...)

(2) Except as otherwise provided in this section, §§17.53-17.56 of this title, relating to requirements for membership in the general "GO TEXAN" program shall apply to entities certified under this section.

(d) Fees.

(1) Applicants who have been granted membership and have paid the "GO TEXAN" program fee, shall not pay an annual fee to enroll in the "GO TEXAN" beef program.

(2) Applicants who have not enrolled in the "GO TEXAN program shall pay an annual fee in the amount of $25.00 to enroll in the "GO TEXAN" beef program.

(e) Review panels. Review panels provided for as part of the application review process under this section shall be appointed by the commissioner and shall be composed of three meat scientists with doctorate degrees in meat science and a background in research.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 23, 1999.

TRD-9905336
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 463-4075

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4 TAC §17.60

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of §17.60 is proposed under the Texas Agriculture Code §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code; and, §12.0175 which authorizes the department to establish programs to promote products grown in Texas and products made from ingredients grown in Texas and to charge a membership fee for those programs not to exceed $50.

The code affected by the repeal is the Texas Agriculture Code, Chapter 12.

§17.60. Go Texan NativeScape Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 23, 1999.

TRD-9905337
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

Part II. Texas Department of Banking

Chapter 29. Sale of Checks Act

7 TAC §29.1

The Finance Commission of Texas (the commission) and the Banking Commissioner of Texas (the commissioner) propose an amendment to §29.1 concerning permissible investments for sale of check license holders under Finance Code, Chapter 152. The term "permissible investment" is defined at Finance Code, §152.002(6), and includes any investment approved by the commissioner. Section 29.1 is a description of approved investments that may be held by a license holder for the purpose of meeting the security requirement of Finance Code, §152.3015.

Finance Code, §152.301 and §152.3015, set forth minimum security and net worth requirements for sale of check license holders. Finance Code, §152.301, requires all license holders to maintain: (1) a surety bond as required by Finance Code, §152.206, (2) a net worth in the amount prescribed by Finance Code, §152.203, and (3) additional security in the form of a surety bond or letter of credit, or permissible investments, in an amount equal to the aggregate face amount of all outstanding checks sold in the United States, less the amount of the surety bond required under Finance Code, §152.206. The additional security requirement is reduced for a license holder with a net worth of at least $5 million to not less than 50% of the amount required under Finance Code, §152.301(a)(3)(A).

Finance Code, §152.3015, is a phase-in security requirement applicable only to license holders as of January 1, 1995 with a net worth of at least $5 million. The additional security requirement is reduced to not less than 30% of the amount otherwise required for the 12-month period beginning September 1, 1997, and to not less than 40% of the amount otherwise required for the 12-month period beginning September 1, 1998. Finance Code, §152.3015, expires on September 2, 1999, at which time all license holders will be required to comply with the security requirement of Finance Code, §152.301(a)(3). Finance Code, §152.301 and §152.3015, each permit a license holder to hold permissible investments in lieu of a surety bond or letter of credit for the purpose of meeting the security requirement of each respective section.

Section 29.1 is proposed to be amended in two respects. First, because Finance Code, §152.3015, expires on September 2, 1999, the proposed amendment will clarify that the same permissible investments that satisfy the security requirement of Finance Code, §153.3015, may be held by a license holder for the purpose of meeting the additional security requirement of Finance Code, §152.301. In practice, the department has interpreted §29.1 as describing permissible investments that satisfy the security requirement of Finance Code, §152.301(a)(3). Second, the proposed amendment will expand the list of approved investments under Finance Code, §152.301(a)(3), to include, under certain circumstances and subject to certain limits, a surety bond held in another state.

The purpose of the security requirement is to provide protections and a mechanism for Texas consumers to recover the value of instruments purchased in this state from license holders in the event of a loss. However, Finance Code, §152.301(a)(3), requires a license holder operating in Texas to maintain security based on all instruments sold in the United States. A license holder that operates in another state may already be required to maintain a surety bond to cover instruments sold in that other state. A license holder should be able to offset its non-Texas liabilities for outstanding checks to the extent those liabilities are

bonded in other states. Accordingly, the proposed amendment would enable a license holder to receive credit for a portion or all of a surety bond it maintains in another state, to the extent that the bond amount does not exceed the outstanding checks sold in that state, by including such surety bond in the list of approved permissible investments, subject to certain additional conditions.

The license holder must maintain a surety bond or have on hand other permissible investments (or a combination of a surety bond and permissible investments) sufficient to satisfy the requirements of Finance Code, §152.301(a)(3), with respect to the outstanding checks sold by the license holder in this state. In addition, the surety bond must be issued by a bonding company or insurance company acceptable to the commissioner. These conditions are proposed to ensure that a license holder maintains in Texas sufficient security to cover the instruments sold in this state.

Stephanie Newberg, Director of Special Audits, Texas Department of Banking, has determined that for the first five-year period these changes are in effect, there is no fiscal implication for state or local government as a result of enforcing or administering the changes.

Ms. Newberg also has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of its adoption will be the reduction of regulatory burdens while preserving protections and a mechanism for consumers to recover the value of instruments purchased from licensees. There will be no adverse effect on small businesses or micro-businesses.

Comments on the proposed amendment may be submitted in writing to Jeffrey L. Schrader, Assistant General Counsel, Texas Department of Banking, 2601 N. Lamar Boulevard, Austin, Texas, 78705-4294.

This amendment is proposed under Finance Code, §152.102, which authorizes the commission to adopt rules necessary for the enforcement and orderly administration of Finance Code, Chapter 152.

Finance Code, §152.301 and §152.3015, are affected by the proposed amendment to §29.1.

§29.1. Permissible Investments.

(a) The term "permissible investments" for purposes of satisfying the requirements of the Finance Code, §152.301(a)(3) [~~§152.3015~~], includes:

(1)-(5) (No change.)

(b)-(d) (No change.)

(e) That portion of a surety bond maintained for the benefit of check purchasers in another state that is not in excess of the amount of outstanding checks sold in that state may be used to satisfy the permissible investments required of a licensee, provided:

(1) the licensee maintains a surety bond or has on hand other permissible investments (or a combination of a surety bond and permissible investments) in an amount sufficient to satisfy the requirements of Finance Code, §152.301(a)(3), with respect to the outstanding checks sold by the licensee in Texas; and

(2) the surety bond must be issued by a bonding company or insurance company acceptable to the commissioner.

(f) [~~(e)~~] Notwithstanding the provisions of subsections (a), (b), [~~and~~] (d), and (e) of this section, if the banking commissioner at any time finds with respect to a particular licensee that an investment permitted by this section and held in the licensee's portfolio is unsatisfactory for investment purposes or poses a significant supervisory concern, the banking commissioner may disallow the investment for purposes of determining compliance by the licensee with the Finance Code, §152.301 [~~§152.3015~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 20, 1999.

TRD-9905305
Everette D. Jobe
General Counsel
Texas Department of Banking
Proposed date of adoption: October 15, 1999
For further information, please call: (512) 475-1300

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter H. Approval of Distance Education and Off-Campus Instruction for Public Colleges and Universities

19 TAC §§5.151-5.161

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Baord or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§5.151-5.161, concerning Approval of Distance Learning for Public Colleges and Universities. The repealed rules clarify, reorganize, condense and make more consistent the previous rules, but contain no significant or substantial changes from existing policy. Procedures for implementing the rules have been removed. The repeal of the rules continue to define state policy regarding courses offered at a distance from a main public institution campus, to specify Coordinating Board and governing board authorities, and to set standards and criteria for distance courses.

Marshall Hill, Assistant Commissioner for Universities and Health-Related Institutions determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rules.

Dr. Hill also has determined that for the first five years the rules are in effect the public benefit will be that the public and public higher education institutions will be better able to understand the steps that should be taken in order to offer distance education and off-campus courses and programs and the standards that these courses and programs should meet. There will be no

effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the repeal of the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The repeal of the rules are proposed under Texas Education Code, Sections 61.027 and 61.051(j) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval of Distance Learning for Public Colleges and Universities.

There were no other sections or articles affected by the proposed repealed rules.

§5.151. Purpose.

§5.152. Definitions.

§5.153. Certification.

§5.154. General Provisions.

§5.155. Standards and Criteria for Distance Education and Off-Campus Instruction.

§5.156. Institutional Plan for Distance Education.

§5.157. Off-Campus Instruction Plan.

§5.158. Procedures for Review and Approval of Off-Campus Lower-Division Instruction.

§5.159. Procedures for Review and Approval of Off-Campus Upper-Level and Graduate Courses and Programs.

§5.160. Approval of State-Funded Out-of-State and Foreign Distance Education and Off- Campus Courses.

§5.161. Non-State-Funded Out-of-State and Foreign Classes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 19, 1999.

TRD-9905289

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 28, 1999

For further information, please call: (512) 483-6162

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19 TAC §§5.151-5.157

The Texas Higher Education Coordinating Board proposes New §§5.151-5.157, concerning Approval of Distance Education and Off-Campus Instruction for Public Colleges and Universities. The proposed new rules clarify, reorganize, condense and make more consistent the previous rules, but contain no significant or substantial changes from existing policy. Procedures for implementing the rules have been removed. The rules continue to define state policy regarding courses offered at a distance from a main public institution campus, to specify Coordinating Board and governing board authorities, and to set standards and criteria for distance courses.

Marshall Hill, Assistant Commissioner for Universities and Health-Related Institutions determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rules.

Dr. Hill also has determined that for the first five years the rules are in effect the public benefit will be that the public and public higher education institutions will be better able to understand the steps that should be taken in order to offer distance education and off-campus courses and programs and the standards that these courses and programs should meet. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 61.027 and 61.051(j) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval of Distance Education and Off-Campus Instruction for Public Colleges and Universities.

There were no other sections or articles affected by the proposed amendments.

§ 5.151. Purpose.

This subchapter provides guidance to all public institutions of higher education in Texas regarding the delivery of distance education and off-campus courses and programs. The Board's goals are to ensure the quality of Texas-based distance education and off-campus courses and programs and to provide residents with access to distance education and off- campus courses and programs that meet their needs. The rules are designed to assure the adequacy of the technical and managerial infrastructures necessary to support those courses and programs.

§5.152. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board – The Texas Higher Education Coordinating Board.

(2) Commissioner The Commissioner of Higher Education.

(3) Distance education – Instruction in which the majority of the instruction occurs when the student and instructor are not in the same physical setting. A class is considered a distance education class if students receive more than one-half of the instruction at a distance. Distance education can be delivered synchronously or asynchronously to any single or multiple location(s):

(A) Other than the main campus of a senior institution (or on campus), where the primary office of the chief executive officer of the campus is located;

(B) Outside the boundaries of the taxing authority of a public community/junior college district; or

(C) Via instructional telecommunications to any other distant location, including electronic delivery of all types.

(4) Institutional Plan – A long-term plan describing how an institution seeking authority to offer distance education and off-campus instruction will ensure quality and resources in providing

such instruction, based on Board-adopted Guidelines for Institutional Plans.

(5) Instructional Telecommunications Electronic telecommunication technology systems employed to deliver distance education instruction.

(6) Off-Campus Instruction in which one-half or more of the instruction is delivered with the instructor and student in the same physical location and which meets one of the following criteria: for senior institutions, Lamar state colleges, or public technical colleges, off-campus locations are locations away from the main campus; for public community/junior colleges, off-campus locations are locations outside the taxing district.

(7) Off-Campus Instruction Plan An institution's listing by location of off- campus lower-division courses and programs planned to be taught during an academic year. For public community/junior colleges, the Off-Campus Instruction Plan will contain both out-of-service area courses and programs which require Regional Council review and approval, as well as out-of-district-but-in-service-area courses and programs which merely require Regional Council notification.

(8) Program Any certificate or degree program offered by a public institution of higher education.

(9) Regional Council A cooperative arrangement among representatives of all public and independent higher education institutions within a Uniform State Service Region.

(10) Senior institution Public universities, health science centers and health- related institutions. All provisions of this subchapter relating to universities or to senior institutions also apply to health science centers and health-related institutions.

(11) Service area The territory served by a public community/junior college district as defined in Texas Education Code, Subchapter J (relating to Junior College District Service Area).

(12) Special professional First professional degree programs, such as law, pharmacy, optometry, dentistry, medicine and veterinary medicine.

§5.153. General Provisions.

(a) This subchapter governs the following types of instruction:

(1) Academic credit instruction and formula-funded workforce continuing education provided by a public community/junior college outside of the boundaries of its taxing district;

(2) Academic credit instruction provided by a public technical college, Lamar state colleges, university, or health-related institution at a site other than the main campus where the primary office of the chief executive officer of the campus is located; or

(3) Academic credit instruction provided at out-of-state or foreign locations by public institutions of higher education;

(b) This subchapter does not apply to the following types of instruction:

(1) Non-credit adult and continuing education courses provided at a distance by universities and health science centers;

(2) Continuing education, except formula-funded workforce continuing education, provided by public community/junior colleges, Lamar state colleges, and public technical colleges; or

(3) Correspondence and extension classes that are not submitted for formula-funding.

(c) The Board retains final authority for the offering of all classes, courses, programs, and degrees, and may take whatever action it deems appropriate to comply with the law or to maintain a high-quality and cost-effective system of distance education and off- campus instruction for the state.

(1) Each course and program offered under the provisions of this subchapter must be within the role and mission of the institution responsible for offering the instruction. Each course must be on the offering institution's inventory of approved courses, and each program must be on the offering institution's inventory of approved programs.

(2) Prior approval may be required before an institution may offer courses and programs under the provisions of this subchapter in certain subject area disciplines or under other conditions specified by the Board.

(3) No doctoral or special professional degree programs may be offered via distance education or off-campus instruction without specific prior approval by the Board.

(d) An institution offering a full degree or certificate program under the provisions of this subchapter shall comply with relevant procedures and rules of the appropriate regulatory or accrediting agency, or professional certification board.

(e) No graduate degree program may be offered via distance education or off- campus instruction without prior notification by the institution to regulatory or accrediting agency or professional certification board.

(f) A program is considered to be offered via distance education or off-campus instruction if a student may complete a substantial majority of the program without taking any courses on the main campus of the public university, public technical college, or health-related institution providing the instruction, or without physically attending classes within the boundaries of the taxing district of the public community/junior college district providing the instruction.

(g) Notice of each course offered via off-campus instruction under the provisions of this subchapter shall be submitted to the Board. Notice of each program offered via distance education, including Internet delivery, or off-campus instruction shall be submitted to the Board. Notice shall be provided in accordance with provisions and schedules determined by the Commissioner.

(h) State-funded distance education and off-campus instruction shall be reported in accordance with the Board's uniform reporting system and the reporting provisions of this subchapter.

(i) Institutions may be required to provide special reports on distance education and off-campus courses and programs for inclusion in institutional and statewide reports.

(j) Institutions shall not submit for formula funding semester credit hours generated by any student via distance education until the institution has determined that the student is a Texas resident for tuition purposes or is physically located in Texas. In limited cases, exceptions can be approved by the Commissioner.

§5.154. Standards and Criteria for Distance Education and Off-Campus Instruction.

The following standards and criteria shall apply to distance education and off-campus instruction.

(1) Instruction shall meet the quality standards applicable to on-campus instruction.

(2) Courses which offer either semester credit hours or Continuing Education Units shall do so in accordance with the standards of the Commission on Colleges of the Southern Association of Colleges and Schools.

(3) Students shall satisfy the same requirements for admission to the institution, to the program of which the course is a part, and to the class/section itself, as are required of on-campus students. Students in programs to be offered collaboratively must meet the admission standards of their home institutions.

(4) Faculty shall be selected and evaluated by the same standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus instruction.

(5) Institutions shall provide training and support to enhance the added skills required of faculty teaching classes via instructional telecommunications.

(6) The instructor of record shall bear responsibility for the delivery of instruction and for evaluation student progress.

(7) Providers of graduate-level instruction shall be approved in the same manner as graduate faculty for on-campus instruction.

(8) All instruction shall be administered by the same entity administering the corresponding on-campus instruction. The supervision, monitoring, and evaluation processes for instructors shall be comparable to those for on-campus instruction.

(9) Students shall be provided academic support services, including academic advising, counseling, library and other learning resources, tutoring services, and financial aid, comparable to those available for on-campus students.

(10) Facilities (other than homes as distance education reception sites) shall be comparable in quality to those for on-campus instruction.

(11) Institutions shall adhere to additional criteria outlined in the Guidelines for Institutional Plans for Distance Education and Off-Campus Instruction.

§5.155. Institutional Plan for Distance Education and Off-Campus Instruction.

(a) Prior to offering any distance education or off-campus courses or programs for the first time, a public community/junior or Lamar state college, technical college, or senior institution shall submit an Institutional Plan for Distance Education and Off-Campus Instruction to the Board for approval. The Commissioner shall provide guidelines for development of such plans.

(b) Institutional academic and administrative policies shall reflect a commitment to maintain the quality of distance education and off-campus programs in accordance with the provisions of this subchapter. An Institutional Plan shall conform to Board guidelines and criteria of the Commission on Colleges of the Southern Association of Colleges and Schools in effect at the time of the Plan's approval. These criteria shall include provisions relating to:

(1) Institutional Issues;

(2) Educational Programs;

(3) Faculty;

(4) Student Support Services; and

(5) Distance Education Facilities and Support.

(c) Prior to Board consideration of an Institutional Plan, the Commissioner may approve an offering by an institution of a limited number of distance education courses for experimental purposes.

(d) Each institution with an approved Institutional Plan for Distance Education and Off-Campus Instruction shall submit an updated Plan on a schedule to be determined by the Commissioner. Thereafter, Institutional Plans shall be reviewed periodically on a schedule to be determined by the Commissioner.

§5.156. Distance Education and Off-Campus Course and Program General Provisions.

(a) The Commissioner shall develop procedures governing the review and approval of distance education and off-campus courses and programs.

(b) Regional Councils in each of the ten Uniform State Service Regions are hereby authorized to make recommendations to the Commissioner and to resolve disputes regarding plans for lower-division courses and programs proposed by public institutions.

(1) The presidents, or designated representatives, of each public and independent institution of higher education with its main campus in each Region comprise the Council membership.

(2) The Commissioner shall develop procedures to govern Regional Council responsibilities.

§5.157. Out-of-State and Foreign Course and Program General Provisions.

(a) State-funded out-of-state and foreign off-campus courses offered by Texas public institutions of higher education, or by an approved consortium composed of Texas public institutions, shall be approved by the Commissioner in order for the semester credit hours or contact hours generated in those courses to be used for formula reimbursement and shall adhere to procedures and standards developed by the Commissioner for out-of-state and foreign offerings.

(b) Non-state-funded credit courses shall not be included in submissions to Regional Councils. Non-credit adult and continuing education courses offered at a distance by universities and health science centers are exempt from this subchapter.

(c) Institutions may not submit for formula funding distance education courses delivered outside the state without specific prior approval by the Commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483-6162

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Subchapter K. Private and Out-of-State Public Degree-Granting Institutions Operating in Texas

19 TAC §§5.211, 5.213, 5.214, 5.217, 5.220, 5.225

The Texas Higher Education Coordinating Board proposes amendments to §§5.211, 5.213, 5.214, 5.217, 5.220, and 5.225,

concerning Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas. The proposed amendments to the rules are being made to provide appropriate oversight of out-of-state institutions of higher education seeking to operate in Texas; to clarify appropriate standards for operation of institutions of higher education; and to respond to recently-passed legislation. The rules will recognize the legitimacy of accreditation by any regional accreditor resulting in less oversight by the state of out-of state institutions while still maintaining appropriate protection of the public, create a standard on admission and remediation and modify a standard for credit for prior learning for new institutions of higher education, and codify a new exemption included in the law.

Marshall Hill, Assistant Commissioner for Universities & Health Related Institutions determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rules.

Dr. Hill also has determined that for the first five years the rules are in effect the public benefit will be that the public will continue to be protected from institutions offering fraudulent or substandard degrees while providing less regulatory burden to legitimate institutions, which may result in a greater number of educational offerings available to the public. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, §61.027 and §61.311 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas.

There were no other sections or articles affected by the proposed amendments.

§ 5.211. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(12) (No change.)

(13) Recognized accrediting agency – the Commission on Higher Education, Middle States Association of Colleges and Schools; the Commission on Institutions of Higher Education, New England Association of Schools and Colleges; the Commission on Institutions of Higher Education, North Central Association of Colleges and Schools; the Commission on Colleges, The Northwest Association of Schools and Colleges; the Commission on Colleges, Southern Association of Colleges and Schools; the Accrediting Commission for Community and Junior Colleges and Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges; the Accrediting Association of Bible Colleges; or the Association of Theological Schools in the United States and Canada.

(14)-(15) (No change.)

§ 5.213. Administrative Procedures Related to Certification of Nonexempt Institutions.

(a)-(d) (No change.)

(e) Application Fee for Certificates of Authority, Amendments to Certificates of Authority, Application Fee for Initial Review of a Branch Campus or Extension Center, Fee for Site Visit to a Branch Campus or Extension Center, and Certificates of Registration of an Agent. Each biennium the commissioner shall set an application fee for certificates of authority equal to the average cost of evaluating the applications. The fee shall include the costs of travel, meals, and lodging of the visiting team and the commissioner, or his designated representatives, and consulting fees for the visiting team members. The commissioner shall also set the fee for an amendment to a certificate of authority, the application fee for initial review of a branch campus or extension center, the fee for a site visit to a branch campus or extension center, and the fee for a certificate of registration of an agent. The commissioner shall report the fees to the board at a quarterly meeting of the board.

(f)-(h) (No change.)

(i) Recognition of Accrediting Agencies. In seeking to assure standards that are sufficient to protect citizens from fraudulent and substandard operations and to treat all postsecondary educational institutions with equity, both exempt and nonexempt, the board recognizes accrediting agencies for purposes of this section, [~~has recognized the Commission on Colleges, Southern Association of Colleges and Schools (SACS) as the accrediting agency for certification. However, the board will consider the recognition of other accrediting agencies~~] provided they can demonstrate they meet the criteria listed in paragraphs (1) and (2) of this subsection.

(1) The accrediting agency must be [~~a member of or~~] recognized by the Council for Higher Education Accreditation [~~Council on Postsecondary Accreditation~~] or its successor and [~~must be recognized~~] by the United States Department of Education.

(2) (No change.)

§5.214. Standards for Nonexempt Institutions.

(a) The decision to grant a certificate of authority to an institution will be based on its compliance with the following 24 standards, priority given to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress following initial approval which would ensure accreditation within the allotted time. The 24 standards represent generally accepted administrative and academic practices and principles of accredited institutions of higher education in Texas. Such practices and principles are generally set forth by regional [~~the Commission on Colleges, Southern Association of Colleges and Schools~~] and [~~by~~] specialized accrediting bodies and the academic and professional societies which have established standards for their members' programs such as the National Association of College and University Business Officers and the American Association of Collegiate Registrars and Admissions Officers.

(1)-(4) (No change.)

(5) Student Admission and Remediation. Upon the admission of a student to any undergraduate program, the institution shall document that the student is prepared to undertake college level work, generally by obtaining proof of the student's high school graduation or General Educational Development (GED) certification, and by assessing with an appropriate diagnostic test the student's ability to do collegiate level work. If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The institution shall provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study. Upon the admission of

a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof of the student's holding a baccalaureate degree from an institution accredited by a recognized accrediting agency or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The institution shall follow standard practice in assessing the credentials of students who graduated from foreign institutions.

(6) [~~(5)~~] Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study. Each faculty member teaching in an academic associate or baccalaureate level degree program shall have at least a master's degree from an institution accredited by a recognized agency or a regional accrediting agency with at least 18 graduate semester credit hours in the discipline being taught. Furthermore, at least 25% of coursework in an academic associate or baccalaureate level major shall be taught by faculty members holding doctorates, or other terminal degrees, in the discipline being taught from institutions accredited by a recognized agency or a regional accrediting agency. Each faculty member teaching technical or vocational courses in a vocational associate degree program shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency or a regional accrediting agency and at least three years of direct or closely related experience in the discipline being taught. Each faculty member teaching general education courses in a vocational associate degree program shall meet the requirements for academic associate faculty listed above. Graduate level degree programs shall be taught by faculty holding doctorates, or other terminal degrees, in the discipline being taught from institutions accredited by a recognized agency or a regional accrediting agency.

(7) [~~(6)~~] Faculty Size. There shall be a sufficient number of full-time teaching faculty resident and accessible to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. At the associate and baccalaureate levels, there shall be at least one full time faculty member in each program. At the graduate level, there shall be at least four full time faculty members in each program.

(8) [~~(7)~~] Curriculum. The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Substantially all of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution, provided such courses are appropriate to the level of the institution.

(9) [~~(8)~~] General Education. Each associate or baccalaureate degree program shall contain a general education component consisting of at least 25% of the total hours offered for the program. This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and in basic computer instruction. Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs and leveling courses for graduate programs, may not count toward course requirements for the degree. The applicant institution may arrange for all or part of the general education component to be taught by another institution with the following provisions: the applicant institution's faculty shall design the general education requirement, there shall be a written agreement between the institutions to provide the general education component, at least one-half of the courses shall be offered in organized classes, and the providing institution shall be accredited by a recognized accrediting agency.

(10) [~~(9)~~] Credit for Prior Learning. An institution awarding collegiate credit for prior learning obtained outside a formal degree-granting institution shall establish and adhere to a systematic method for evaluating that prior learning, shall award credit only in course content which falls within the authorized degree programs of the institution, in an appropriate manner shall relate the credit to the student's current educational goals [~~equating it with course content appropriate to the institution's authorized degree programs~~], and shall subject the institution's process and procedures for evaluating prior learning to ongoing review and evaluation by the institution's teaching faculty. Recognized evaluative examinations such as the advanced placement program or the college level examination program may be used. No more than 15 semester credit hours or 23 quarter credit hours in a student's associate or baccalaureate degree program may be based on validated prior learning. No graduate credit for prior learning may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(11) [~~(10)~~] Library. The institution shall have in its possession or direct control and readily available to its students and faculty a sufficient quality and variety of library holdings to support adequately its own curriculum. The holdings shall be catalogued and be readily accessible to students and faculty. The institution shall have adequate library facilities for the library holdings, space for study, and workspace for the librarian and library staff. The librarian shall hold a graduate degree in library science from an institution accredited by a recognized accrediting agency or a regional accrediting agency. Arrangements for the use of library materials made with other libraries shall be formalized in writing, the collection shall be validated by the institution to be appropriate for the programs being offered, records of usage by the students shall be kept, and the library shall be reasonably accessible to the students and faculty.

(12) [~~(11)~~] Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality.

(13) [~~(12)~~] Financial Resources and Stability. The institution shall have adequate financial resources and financial stability to provide education of good quality and to be able to fulfill its commitments to students. The institution shall have sufficient reserves so that, together with tuition and fees, it would be able to complete its educational obligations to currently enrolled students if it were unable to admit any new students.

(14) [~~(13)~~] Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports shall be in accordance with the guidelines of the National Association of College and University Business Officers as set forth in College and University Business Administration, Fifth Edition, or such later editions as may be published. An annual independent audit of all fiscal accounts of the educational institution shall be authorized by the governing board and shall be performed by a properly authorized certified public accountant.

(15) [~~(14)~~] Academic Freedom and Faculty Security. The institution shall adopt and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning

promotion; tenure; and non-renewal or termination of appointments, including for cause, shall be clearly published in a faculty handbook and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document given to that faculty member and a copy retained by the institution.

(16) [~~(15)~~] Academic Records. Adequate records shall be securely maintained by the institution to show attendance, progress, or grades, and to assure that satisfactory guidelines are followed relating to attendance, progress, and performance. Two copies of said records shall be maintained in secure places. Transcripts shall be issued upon the request of the students.

(17) [~~(16)~~] Catalog. The institution shall provide students and other interested persons with a catalog or brochure containing information describing the purpose, length, and objectives of the programs offered by the institution; schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study; cancellation and refund policies; and such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein. Any disclosures specified by the board or defined in the rules shall be included. This information shall be provided to prospective students prior to enrollment.

(18) [~~(17)~~] Refund Policy. The institution shall publish and adhere to a fair and equitable cancellation and refund policy.

(19) [~~(18)~~] Credentials. Upon completion, the student shall be given appropriate educational credentials by the institution indicating that the program undertaken has been satisfactorily completed.

(20) [~~(19)~~] Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic and personal counseling, career information and planning, placement assistance, and testing services.

(21) [~~(20)~~] Student Handbook. A handbook listing the student's rights and responsibilities shall be published and supplied to the student upon enrollment in the institution. The institution shall establish a clear and fair policy regarding due process in disciplinary matters and publish it in the handbook.

(22) [~~(21)~~] Health Services. The institution shall provide an effective program of health services and education reflecting the needs of the students.

(23) [~~(22)~~] Housing. The student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, and adequate.

(24) [~~(23)~~] Legal Compliance. The institution shall be maintained and operated in compliance with all ordinances and laws, including rules and regulations adopted pursuant thereto.

(25) [~~(24)~~] Open Representation of Activities. Neither the institution or its agents shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair.

(b) (No Change.)

§5.217. Off-Campus Operations, Changes of Level at Exempt Institutions, and Out-of-State Public Institutions.

(a) Off-Campus Operations. An exempt private institution must be approved by the board to operate a branch campus, extension center, or other off-campus unit in Texas except as noted in Section 5.212(a)(1) of this title (relating to Exemptions). An institution whose off- campus offerings approach the scale of a branch campus, extension center, or other off- campus unit, as defined in Section 5.211 of this title (relating to Definitions), must submit a description of its plans, including such information as provided for on an application form furnished by the board. Upon receipt of an acceptable application and the application fee for initial review of a branch campus or extension center listed in Section 5.213(e) of this title (relating to Administrative Procedures Related to Certification of Nonexempt Institutions [~~planning letter~~], the commissioner may authorize the institution to begin the branch campus [~~continue the planned activity~~], on a temporary basis, pursuant to a formal review and evaluation.

(1) The applicant institution will inform the recognized accreditor of the institution's initial approval so that the accreditor can conduct a site visit at the branch campus or extension center for compliance with that accreditor's criteria for branch campuses. The institution will invite the Southern Association of Colleges and Schools (SACS) to participate in the site visit by providing representation to examine the institution and provide comments. Final action by the accreditor must be completed within two years of the initial approval by the commissioner or initial approval will lapse. If the accreditor does not review the branch campus or extension center, the board will conduct a site visit for compliance with the board's standards listed in Section 5.214 of this title (relating to Standards for Nonexempt Institutions). The board will invite SACS to provide representation to accompany the visiting team and provide comments. If the board conducts the review, the institution will be assessed the fee for a site visit to a branch campus or extension center, as provided in Section 5.213.(e) of this title (relating to Administrative Procedures Related to Cerfitication of Nonexempt Institutions). The institution shall submit the report and final action of the recognized accreditor and the SACS comments to the board.

(2) After examining the reports of the recognized accreditor and SACS, the commissioner may issue continuing approval or denial of the branch campus or extension center. To address the accreditor's actions, the response from SACS, or state concerns, the commissioner may place conditions on continuing approval.

(3) Periodic reviews, including site visits, of the branch campus or extension center are required. If the branch campus or extension center is reviewed by the recognized accreditor and a site visit is conducted, the institution will invite SACS to provide representation to accompany the review team to examine the institution and provide comments. If the branch campus or extension center is not reviewed by the recognized accreditor, the board will conduct the review, including a site visit, according to the schedule used for accreditation of the main campus by the recognized accreditor. SACS will be invited to provide representation to accompany the board site visit team and provide comments. The commissioner may deny continuing approval of any branch campus or extension site which fails to maintain the conditions and standards on which approval was based.

(b)-(e) (No change.)

§5.220. Prohibitions Applicable to Nonexempt Institutions.

(a) (No change.)

(b) A person operating a private, postsecondary educational [~~an~~] institution, or an educational or training establishment, not exempt from this subchapter and that has not been issued a certificate of authority, but is otherwise legally operating, and that has in its official name or title a term protected under subsection (a)(4) and (5) of this section shall remove the protected term from the name or title not later than September 1, 1999 unless the term college or

university was used in the official name or title of the institution before September 1, 1975. A person operating an institution exempt from the prohibition on the use of the term college or university because the term was used in the official name or title of the institution before September 1, 1975, may use the term "college" in the official name or title of another private postsecondary educational institution in this state if the other institution offers the same or similar educational programs and is located in the same county as the institution established before September 1, 1975.

§5.225. Judicial Procedures for Nonexempt Institutions.

An institution whose application for a certificate of authority, amendment to a certificate of authority, branch campus or extension center, or certificate of registration is denied or whose existing certificate is revoked, shall receive a written notice of the reasons for the denial or revocation. The institution may request a hearing under Chapter 2001, Government Code to seek administrative remedy. An institution must submit to the board a written request for hearing within 45 days of the board's decision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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Chapter 8. Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts

Subchapter B. Creation of a Public Community/ Junior College District

19 TAC §8.32

The Texas Higher Education Coordinating Board proposes amendments to §8.32, concerning Creation of a Public Community/Junior College District (Standards and Board Procedure for Approval). The proposed amendments to the rules are being made as a result of changes made in the statute by the Texas Legislature this last session through House Bill 1346 and House Bill 2415. The rules are being proposed to describe the action of a new community college district with respect to a branch campus owned and operated in the new district by another community college district.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges determined that for the first five-year period the rules are in effect the fiscal implications as a result of enforcing or administering the rules for local governments will include the compensation required between two community college districts for the change in ownership of an existing branch campus even though no additional debt is incurred and no additional taxes are levied. There are no fiscal implications for the state or small business with regard to these rules.

Dr. Barron also has determined that for the first five years the rules are in effect the public benefit will be the compensation required between two community college districts over a branch campus for which a change in ownership occurs will appropriately place the financial burden of maintaining the branch campus with the taxpayers of the newly created district. There will be no effect on state government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the amendments to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas, 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 61.061 and 130.001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Creation of a Public Community/Junior College District (Standards and Board Procedure for Approval).

There were no other sections or articles affected by the proposed amendments.

§8.32. Standards and Board Procedure for Approval.

(a) (No change.)

(b) The Board shall apply the following criteria when considering the creation of a new community/junior college district:

(1)-(4) (No change.)

(5) Proximity and impediments to programs and services of existing institutions of higher education, such as:

(A) identification of institutions of higher education, including branch campuses, extension centers, or extension facilities, that could be affected by a new community/junior college;

(B) fair compensation for the community/junior college district that discontinues a branch campus, extension center, or extension facility;

(C) [~~(B)~~] documentation of existing programs and services:

(i) on the campuses of nearby institutions of higher education;

(ii) available to citizens within a 50-mile radius of the proposed district; and

(iii) offered in the proposed district by existing institutions of higher education;

(D) [~~(C)~~] financial limitations on existing institutions of higher education inhibiting the offering of programs and services in the proposed district;

(E) [~~(D)~~] availability of facilities, libraries, and equipment for institutions to offer classes in the proposed district;

(F) [~~(E)~~] distance and traffic patterns to existing institutions of higher education;

(G) [~~(F)~~] effect on enrollment of existing institutions of higher education; and

(H) [~~(G)~~] effect on financing of existing institutions of higher education.

(6) (No change.)

(c)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter E. Branch Campus Maintenance Tax

19 TAC §8.96, §8.98

The Texas Higher Education Coordinating Board proposes amendments to §8.96 and §8.98 concerning Creation of a Public Community/Junior College District (Branch Campus Maintenance Tax). The proposed amendments to the rules are being made as a result of changes made in the statute by the Texas Legislature this last session through House Bill 1346 and House Bill 2415. The rules are being proposed because of House Bill 1346, the rules will limit the oversight of the Coordinating Board with respect to approval of branch campus maintenance tax elections in counties with populations of 150,000 or less.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rules.

Dr. Barron also has determined that for the first five years the rules are in effect the public benefit will be small communities will have more local control in determining if a branch campus maintenance tax election should be held thereby shortening the process for holding that election. There will be no effect on state government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the amendments to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 61.061 and 130.001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Creation of a Public Community/Junior College District (Branch Campus Maintenance Tax).

There were no other sections or articles affected by the proposed amendments.

§8.96. Circulation of a Petition.

(a) In counties with a population of more than 150,000 the [~~The~~] Steering Committee shall be responsible for the circulation of a petition for authorization of an election to levy a public community/junior college branch campus maintenance tax. At a minimum, the petition shall include the maintenance tax limits that shall appear on the ballot in the event an election is authorized. For counties with a population of 150,000 or less, no petition to propose an election for a branch campus maintenance tax shall be submitted to the Board.

(b) (No change.)

§8.98. Presentation of a Certified Petition to the Board.

(a) The governing body of a county with a population of 150,000 or less, on completion and approval of the feasibility study and survey by the Commissioner, may, on its own motion and without presentation and approval of a certified petition to the Board may propose an election to authorize a branch campus maintenance tax. [~~When the petition has been certified, it shall be presented by the appropriate authorities to the Commissioner who shall then present it to the Board.~~]

(b) The governing body of an independent school district or county notwithstanding subsection (a) of this section, shall present a certified petition to the Commissioner for Board action.

(c) [~~(b)~~] After the petition and any additional documentation or information are presented to the Commissioner, a minimum of 45 days must elapse between the date on which the petition and supporting documents are received by the Commissioner and the quarterly meeting of the Board when the Board will consider the petition.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chapter 13. Financial Planning

Subchapter G. Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students

19 TAC §§13.110-13.116

The Texas Higher Education Coordinating Board proposes new §§13.110-13.116 concerning Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students. The proposed new rules are intended to provide consistency and uniformity in the application and interpretation of the new statute limiting state-supported funding of undergraduate instruction. The new rules result in some changes to the way public institutions of higher education report course-related information to the Coordinating Board for funding and identity the responsibilities that institutions have for informing students about the undergraduate limit.

Marshall Hill, Assistant Commissioner for Universities and Health-Related Institutions determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rules.

Dr. Hill also has determined that for the first five years the rules are in effect the public benefit will be that students will be better informed about the undergraduate limit as a result of the rules, and the rules will help the relevant statute to be implemented and interpreted more consistently and uniformly. There will be no effect on state and local government or small businesses.

There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas, 78711.

The new rules are proposed under Texas Education Code, Sections 61.027 and 61.0595 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Formula Funding and Tuition Charged for Excess Credit Hours of Undergraduate Students.

There were no other sections or articles affected by the proposed new rules.

§13.110. Purpose.

This subchapter provides financial incentives for institutions to facilitate the progress of undergraduate students through their academic programs and incentives for students to complete their degree programs expeditiously. Rules contained in this subchapter clarify and expand on the enabling legislation, define responsibilities of institutions and the Coordinating Board in implementing the statute, and ensure that students are adequately informed.

§13.111. Authority.

These rules relate to the Texas Education Code, Sections 54.068 and 61.0595. Section 54.068 specifies the tuition that may be charged to students with excess hours. Section 61.0595 specifies the fundability of undergraduate credit hours.

§13.112. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Remedial and developmental courses–courses designed to correct academic deficiencies and bring students' skills to an appropriate level for entry into college;

(2) Technical courses–workforce education courses or programs at two-year institutions for which semester/quarter credit hours are awarded;

(3) Workforce education courses–technical courses at two-year institutions for which semester/quarter credit hours are awarded. Workforce education courses and programs prepare students for immediate employment or job upgrade within specific occupational categories.

§13.113. Affected Students.

(a) The limitation on funding of excess undergraduate credit hours applies only to hours generated by students who initially enroll as undergraduates in an institution of higher education in the 1999 fall semester or in a subsequent term. If a student has been enrolled as an undergraduate student in any public or private institution of higher education during any term prior to the 1999 fall semester, the student's credit hours are exempt.

(b) Semester credit hours generated by non-resident students paying tuition at the rate provided for Texas residents are subject to the same limitations as hours generated by resident students.

§13.114. Limitation on Formula Funding.

Funding of excess undergraduate semester credit hours is limited as follows:

(1) Institutions may not submit for formula funding semester credit hours attempted by an undergraduate student who has previously attempted 45 or more semester credit hours beyond the minimum number of hours required for completion of the associate or baccalaureate degree program in which the student is enrolled.

(2) An undergraduate student at a four-year institution who is not enrolled in a degree program is considered to be enrolled in a degree program requiring a minimum of 120 semester credit hours.

(3) An undergraduate student at a two-year institution who is not enrolled in a degree or certificate program is considered to be enrolled in an associate degree program requiring a minimum of 60 hours.

(4) Students who enroll on a temporary basis in a Texas public institution of higher education, and are not seeking a degree or Level-Two certificate, and are also enrolled in a private or independent institution of higher education or an out-of-state institution of higher education considered to be enrolled in a degree program requiring a minimum of 120 semester credit hours.

(5) For the purposes of the undergraduate limit, an undergraduate student who has entered into a master's or professional degree program without first completing an undergraduate degree is considered to no longer be an undergraduate student after having completed the equivalent of a bachelor's degree or all of the course work normally taken during the first four years of undergraduate course work in the student's degree program.

(6) The following types of semester credit hours are exempt and do not count toward the limit:

(A) semester credit hours earned by the student before receiving a baccalaureate degree that has been previously awarded to the student;

(B) semester credit hours earned through examination or similar method without registering for a course;

(C) semester credit hours from remedial and developmental courses, technical courses, workforce education courses, or other courses that would not generate academic credit that could be applied to an associate or baccalaureate degree at the institution;

(D) semester credit hours earned by the student at a private institution or an out-of-state institution; and

(E) any semester credit hours not eligible for formula funding.

§13.115. Tuition Charged to Affected Students.

An institution of higher education may charge a higher tuition rate, not to exceed the rate charged to nonresident undergraduate students, to an undergraduate student whose hours can no longer be submitted for formula funding because of the funding limit defined in §13.114 of this title (relating to Limitation on Formula Funding).

§13.116. Responsibilities of Institutions.

(a) Institutions are required to keep all records necessary to comply with the Texas Education Code, Sections 54.068 and 61.0595.

(b) Each community and technical college, Lamar state college, university, and health-related institution shall publish in its catalog information about the limit on undergraduate semester credit hours and the institution's tuition policy regarding students who have exceeded the limit. Until this material is included in catalogs, each institution shall inform undergraduate students initially enrolling at the institution in writing of the limit and the institution's tuition policy regarding the limit.

(c) Community and technical colleges and the Lamar state colleges shall inform each affected undergraduate student of the individual's progress toward the limit when the student has accumulated 70 or more semester credit hours toward the limit.

(d) Universities and health-related institutions shall inform each affected undergraduate student of the individual's progress toward the limit and of the institution's tuition policy for students who exceed the limit as soon as the student has accumulated 120 or more semester credit hours toward the limit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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James McWhorter
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Texas Higher Education Coordinating Board
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Chapter 21. Student Services

Subchapter B. Determining Residence Status

19 TAC §21.33

The Texas Higher Education Coordinating Board proposes amendments to §21.33 concerning Determining Residence Status. The proposed amendments to the rules are being made to amend the residency rules for aliens that are applying for permanent residence. The rules will be used by the residency determination officers at the universities to determine whether particular individuals can be classified as residents for tuition purposes.

Sharon Cobb, Assistant Commissioner for Student Services determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rules.

Ms. Cobb also has determined that for the first five years the rules are in effect the public benefit will be that it will eliminate some of the delay time from the process of individuals being classified as residents for tuition purposes. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the amendments to the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas, 78711.

The amendments to the rules are proposed under Texas Education Code, §54.053 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status.

There were no other sections or articles affected by the proposed amendments.

§21.33. Foreign Students.

(a)-(b) (No change.)

(c) An individual who enters the state under a visa which does not allow the establishment of a domicile and who obtains permanent resident status while in Texas may not be reclassified for tuition purposes until he or she has been granted permanent resident status and has resided in Texas a minimum of 12 consecutive months from the date on which he or she applied for permanent resident status. [~~must wait a minimum of 12 consecutive months from the date on which permanent residence status was granted before they may apply for reclassification. The date on which permanent residence status was granted can be determined by the adjudication date (ADJ date) on Alien Registration Receipt Cards or by other official documentation provided by the United States Immigration and Naturalization Service.~~]

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter F. Matching Scholarships to Retain Students in Texas

19 TAC §§21.151-21.156

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes new §§21.151-21.156 concerning Matching Scholarships to Retain Students in Texas. The new rules are being made to implement House Bill 2867 passed by the 76th session of the Texas Legislature. The new rules will be used by the colleges and universities to make matching grants to students who have received offers from out-of-state institutions.

Sharon Cobb, Assistant Commissioner for Student Services determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rules.

Ms. Cobb also has determined that for the first five years the rules are in effect the public benefit will be that it will help retain some of Texas' best and brightest students to attend college in Texas. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas, 78711.

The new rules are proposed under Texas Education Code, §61.086 which provides the Texas Higher Education Coordinat-

ing Board with the authority to adopt rules concerning Matching Scholarships to Retain Students in Texas.

There arre no other sections or articles affected by the proposed new rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter N. Teach for Texas Conditional Grant Program

19 TAC §§21.430-21.449

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes new §§21.430-21.449, concerning Teach for Texas Conditional Grant Program. The new rules are being made to implement the Teach for Texas Conditional Grant Program. The grant program was passed in House Bill 713 by the 76th session of the Texas Legislature. The new rules will be used by the deans of the colleges of education and the financial aid offices to make grants to college students.

Sharon Cobb, Assistant Commissioner for Student Services determined that for the first five-year period the rules are in effect the fiscal implications as a result of enforcing or administering the rules will be that the estimated cost of the program will be $2,000,000 for each year.

Ms. Cobb also has determined that for the first five years the rules are in effect the public benefit will be the program will provide grants to students who are studying to be teachers and agree to teach in underserved areas or teach and obtain degrees in and teach subjects that have a critical shortage of teachers. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new rules are proposed under Texas Education Code, §56.603 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Teach for Texas Conditional Grant Program.

There were no other sections or articles affected by the proposed amendments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter O. Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program

19 TAC §§21.460-21.464, 21.466-21.472, 21.474-21.486

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the repealed sections it adopts on an emergency basis in this issue. The repealed sections are in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes the repeal of §§21.460-21.464, 21.466-21.472, and 21.474-21.486 concerning Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program. The repeal to the rules is being made because the program was transferred to the Center for Rural Health Initiatives and new rules are being written to replace this.

Sharon Cobb, Assistant Commissioner for Student Services determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rules.

Ms. Cobb also has determined that for the first five years the rules are in effect the public benefit will be the program is transferred and will be replaced with new rules. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the repeal of the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas, 78711.

The repeal of the rules are proposed under Texas Education Code, §61.877 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program.

There are no other sections or articles affected by the proposed amendments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter O. Early Childhood Care Provider Student Loan Repayment Program

19 TAC §§21.465-21.477

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes new §§21.465-21.477 concerning Early Childhood Care Provider Student Loan Repayment Program. The proposed new rules are being made to implement House Bill 1689 passed by the 76th session of the Legislature. The new rules will be used by the staff at the Coordinating Board to administer the Early Childhood Care Provider Student Loan Repayment Program. The new rules will also be used by applicants for funding to determine if they qualify and to give them the requirements of participating in the program.

Sharon Cobb, Assistant Commissioner for Student Services determined that for the first five-year period the rules are in effect the fiscal implications will be that the cost of the program is $262,500 for the first year and $485,150 as a result of enforcing or administering the rules. Future costs will depend on appropriations made by the Legislature.

Ms. Cobb also has determined that for the first five years the rules are in effect the public benefit will be the program will recruit and retain qualified child-care providers who serve in licensed Texas child-care facilities, whose duties consist primarily of providing child care or education to children less than four years old. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas, 78711.

The new rules are proposed under Texas Education Code, §61.877 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Early Childhood Care Provider Student Loan Repayment Program.

There are no other sections or articles affected by the proposed amendments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter R. Dental Education Loan Repayment Program

19 TAC §§21.560-21.566

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes new §§21.560-21.566, concerning Dental Education Loan Repayment Program. The new rules are being made to implement House Bill 3544 passed by the 76th session of the Legislature. The new rules will be used by the staff at the Coordinating Board to administer the program. The new rules will also be used by applicants to the program to determine if they qualify and to determine the requirements for participating in the program.

Sharon Cobb, Assistant Commissioner for Student Services determined that for the first five-year period the rules are in effect the fiscal implications as a result of enforcing or administering the rules are the estimate cost of the program is $117,000 for each year.

Ms. Cobb also has determined that for the first five years the rules are in effect the public benefit will be the program will recruit and retain qualified dentists to provide dental care in areas of Texas that are underserved with respect to dental care. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new rules are proposed under Texas Education Code, §61.908 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Dental Education Loan Repayment Program.

There were no other sections or articles affected by the proposed amendments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter S. Border County Doctoral Faculty Education Loan Repayment Program

19 TAC §§21.590-21.596

(Editor's note: The Texas Higher Education Coordinating Baord proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new section are in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes new §§21.590-21.596, concerning Border County Doctoral Faculty Education Loan Repayment Program. The new rules are being made to implement the Boarder County Doctoral Faculty Education Loan Repayment Program that was passed as part of House Bill 713 by the 76th session of the Legislature. The new rules will be used by the staff at the Coordinating Board to administer the Boarder County Doctoral Faculty Education Loan Repayment Program. The new rules will also be used by faculty to determine if they qualify for the program and the requirements of participating in the program.

Sharon Cobb, Assistant Commissioner for Student Services determined that for the first five-year period the rules are in effect the fiscal implications as a result of enforcing or administering the rules will be that the cost of the program will be $50,000 a year.

Ms. Cobb also has determined that for the first five years the rules are in effect the public benefit will be the program will recruit and retain persons holding a doctoral degree to become and/or remain full-time faculty with instructional duties in Texas institutions of higher education located in counties that border Mexico. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new rules are proposed under Texas Education Code, §61.708 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Border County Doctoral Faculty Education Loan Repayment Program.

There were no other sections or articles affected by the proposed amendments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chapter 22. Grant and Scholarship Programs

Subchapter L. Toward Excellence, Access and Success (Texas) Grant Program

19 TAC §§22.225-22.233

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes new §§22.225-22.233 concerning Toward Excellence, Access, and Success (Texas) Grant Program. The new rules are being made to implement the new grant program, Toward Excellence, Access and Success, for college students. The program was created by House Bill 713 which was passed during the 76th session of the Texas Legislature. The new rules will be used by the financial aid offices at the colleges and universities in making the grant awards to the students.

Sharon Cobb, Assistant Commissioner for Student Services determined that for the first five-year period the rules are in effect the fiscal implications as a result of enforcing or administering the rules will be there is a cost of implementing the program and making the grants to the students of $18,600,000 in the first year and this cost is anticipated to increase each year as a new group of students enters college. The second year cost will be approximately $33,000,000. Cost in additional years will depend on funds that are appropriated. The cost of enforcing the rules is very different from the total cost of implementing the program. The above costs are the total cost of the program not just the enforcement cost.

Ms. Cobb also has determined that for the first five years the rules are in effect the public benefit will be the program will provide funds for financially needy students to assist them with the cost of attending college. There will be no effect on state and local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas, 78711.

The new rules are proposed under Texas Education Code, §56.303 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Toward Excellence, Access, & Success (Texas) Grant Program.

There are no other sections or articles affected by the proposed amendments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Part II. Texas Education Agency

Chapter 105. Foundation School Program

Subchapter BB. Commissioner's Rules Concerning State Aid Entitlements

19 TAC §105.1011, §105.1012

The Texas Education Agency (TEA) proposes new §105.1011 and §105.1012, concerning state aid entitlements. The new sections establish definitions, requirements, and procedures for distribution of the foundation school fund and implementation of additional state aid for professional staff salaries.

Proposed new 19 TAC §105.1011 revises the determination of the tax rate limit authorized under the Texas Education Code (TEC), §42.253(e), for funding the second tier of the Foundation School Program in order to conform to the changes authorized by Senate Bill (SB) 4, 76th Texas Legislature, 1999. Proposed new 19 TAC §105.1012 provides information about the additional state aid due to school districts to pay for professional staff salaries as authorized under the TEC, §42.2512(c), in order to conform to the changes authorized by SB 4, 76th Texas Legislature, 1999. The proposed new rule also provides definitions and eligibility criteria for qualifying for the additional state aid, explains the calculation of the funding amounts, and specifies schedules and necessary data elements. In the near future, the TEA anticipates filing proposed new rules relating to the minimum salary schedule for certain professional staff, as cross-referenced in proposed new §105.1012.

Joe Wisnoski, coordinator for school finance and fiscal analysis, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Mr. Wisnoski and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be facilitation of the funding allotment for additional state aid for professional staff salaries and clarification for school districts of the changes authorized by SB 4, 76th Texas Legislature, 1999. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §42.253(e-2), as amended by Senate Bill 4, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules to administer distribution of the Foundation School Fund; and Texas Education Code, §42.2512(c), as amended by Senate Bill 4, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules for implementation of additional state aid for professional staff salaries.

The new sections implement the Texas Education Code, §42.253(e-2) and §42.2512(c).

§105.1011. Distribution of Foundation School Fund.

(a) Maximum revenue in the guaranteed yield program. The maximum equalized revenue available to a public school district in the 1999-2000 and 2000-2001 school years for the second tier of the funding system (guaranteed yield program) is a combination of state and local shares in accordance with the Texas Education Code (TEC), Chapter 42, Subchapter F. It is based on a maximum tax rate pursuant to TEC, §42.253(e-1), and paid on the basis of a guaranteed yield per penny of tax effort of $24.99 adjusted for costs in compensatory education funding formulas in accordance with TEC, §42.152(t).

(1) The maximum tax rate is a rate that generates a maintenance and operations (M&O) revenue per weighted student (WADA) within the guaranteed yield program (TEC, §42.301 et seq.) at a guarantee level of $23.10 per penny of tax effort that enables a district to obtain the same level of M&O revenue as would have been available to a district under the provisions of TEC, Chapter 42, as it existed on May 31, 1999.

(2) The M&O revenue that a district would have been able to obtain under TEC, Chapter 42, as it existed on May 31, 1999, is determined by summing a state aid component using the formula that appeared in TEC, §42.302, prior to the passage of Senate Bill 4, 76th Texas Legislature, 1999, and a local tax component.

(A) The state aid component is determined by the following steps.

(i) Determine net tax collections for the 1998-1999 school year by subtracting the local share of any instructional facilities allotment (IFA) from total taxes collected from September 1, 1998, to August 31, 1999.

(ii) Calculate total tax effort by dividing net tax collections by the result of dividing the taxable value of property for the 1997 tax year as determined by the Comptroller of Public Accounts under Texas Government Code, §403.302, by 100.

(iii) Determine tax effort above Tier 1 tax effort by subtracting the local fund assignment rate ($0.86) from the total tax effort.

(iv) Calculate a Tier 2 state and local revenue amount using a formula that multiplies a guarantee level of $21 by the number of weighted students for the applicable school year, then by the tax effort above Tier 1 multiplied by 100. For this purpose, the tax effort above Tier 1 may not exceed the limit imposed by TEC, §42.302.

(v) Calculate a local share of Tier 2 by multiplying the tax effort above Tier 1 by the taxable value of property for the 1998 tax year as determined by the Comptroller of Public Accounts under Texas Government Code, §403.302, divided by 100. For this purpose, the tax effort above Tier 1 may not exceed the limit imposed by TEC, §42.302.

(vi) Calculate the state share of Tier 2 by subtracting the local share of Tier 2 from the Tier 2 state and local revenue amount. The result is the state aid component.

(B) The local tax component is calculated by multiplying the tax effort above Tier 1, without any rate limitation, by the taxable value of property for the 1998 tax year as determined by the Comptroller of Public Accounts under Texas Government Code, §403.302, divided by 100, then subtracting any debt service tax col-

lections that are not part of a local share for the IFA program. The resulting value may not be less than zero.

(b) Expiration date. This section expires on September 1, 2001.

§150.1012. Additional State Aid for Professional Staff Salaries.

(a) Definitions and eligibility. In accordance with Texas Education Code (TEC), §42.2512 and §42.2513, the staff positions eligible for the $300 monthly salary increase and upon which the calculation of additional state aid for professional staff salary increases is based are classroom teachers, full-time librarians, full-time certified counselors, and full-time nurses. These positions are entitled to a minimum salary and are fully defined in §153.1022 of this title (relating to Minimum Salary Schedule for Certain Professional Staff).

(b) Determination of additional state aid. For the 1999-2000 and 2000-2001 school years, to the extent that the $300 monthly increase (up to ten months) in professional staff salaries mandated by TEC, §21.402, is greater than 80% of the additional state aid generated by the statutory changes enacted by Senate Bill (SB) 4, 76th Texas Legislature, 1999, to the Foundation School Program (FSP) funding elements and equalized wealth level, the school district will receive a state aid increase as specified in TEC, Chapter 42.

(1) Pursuant to TEC, Chapter 42, the impact of the statutory changes enacted by SB 4, 76th Texas Legislature, 1999, to the FSP for the two applicable years is computed for each district and a comparison is made between the results. Amounts allocated for the new instructional facilities allotment in accordance with TEC, §42.158, the homestead exemption hold-harmless in accordance with TEC, §42.2511, and optional local homestead exemption in accordance with TEC, §42.2522, are not included in these calculations.

(A) The FSP cost is computed each applicable year using a basic allotment of $2,396 and a guaranteed yield per penny of tax effort of $23.10, with the tax rate limited according to TEC, §42.253(e-1). All other data and formula elements in the funding formulas correspond to those for the applicable year.

(B) The FSP cost is then computed using the new statutory funding elements in effect for the 1999-2000 and 2000-2001 school years, reflecting changes enacted by SB 4, 76th Texas Legislature, 1999. These elements are a basic allotment of $2,537 and a guaranteed yield per penny of tax effort of $24.99 adjusted for costs in compensatory education funding pursuant to TEC, §42.152(t). All other data and formula elements in the funding formulas correspond to those for the applicable year.

(C) For each district in each applicable year, the total revenue (FSP cost) computed in subparagraph (A) of this paragraph is subtracted from the FSP cost in subparagraph (B) of this paragraph to determine the additional state aid generated by the changes in the FSP funding elements. Eighty percent of this difference is computed to produce the applicable state aid increase as specified in TEC, Chapter 42.

(2) Pursuant to TEC, Chapter 41, the impact of the statutory changes enacted by SB 4, 76th Texas Legislature, 1999, to the cost of wealth equalization for the two applicable years is computed for each district affected by the provisions of TEC, Chapter 41.

(A) For each affected district in each applicable year, the cost of wealth equalization (recapture amount) is computed using an equalized wealth level of $280,000 or a greater amount as authorized under TEC, §41.002(e). All other data and formula elements in the funding formulas correspond to those for the applicable year.

(B) For each affected district in each applicable year, the cost of wealth equalization is then computed using the statutory equalized wealth of $295,000 or a greater amount as authorized under TEC, §41.002(e), reflecting changes enacted by SB 4, 76th Texas Legislature, 1999. All other data and formula elements in the funding formulas correspond to those for the applicable year.

(C) For each district in each applicable year, the recapture computed in subparagraph (A) of this paragraph is subtracted from cost in subparagraph (B) of this paragraph to determine the savings in the cost of wealth equalization by the change in the wealth equalization level. Eighty percent of this difference is computed to produce the applicable wealth recapture cost savings.

(3) For each district in each applicable year, the number of staff eligible for the salary increase, measured in full-time equivalents, is multiplied by $3,000 to produce the cost of the salary increase.

(4) For each district in each applicable year, the cost of the salary increase is subtracted from the 80% amount (either the FSP state aid increase or the recapture cost savings). A positive result from this calculation produces the additional state aid due to the district.

(c) Calculation calendar and data elements. The necessary data elements to determine additional state aid for professional staff salaries and the associated estimation cycle are determined by the commissioner of education.

(1) An initial amount of additional state aid due to each district, if any, is determined at the beginning of the school year. Eligible staff are estimated using prior year data as reported to the Public Education Information Management System (PEIMS). FSP state aid calculations are based on projected counts of average daily attendance (ADA) and expected tax collections. Wealth equalization cost calculations are based on estimates of weighted ADA (WADA) as defined by TEC, Chapter 41, and expected tax collections.

(2) The final amount earned by each district is determined when staffing information, audited tax collections, and data elements for the calculation of TEC, Chapter 42, FSP earnings and TEC, Chapter 41, recapture amounts are final and available, after the close of business for the school year.

(3) The number of staff eligible for the additional state aid is determined through PEIMS role ID codes 025 (special duty teacher), 029 (regular teacher), 022 (nurse), 013 (librarian), and 008 (counselor).

(A) Full-time employment status for each nurse, librarian, and counselor is verified through the PEIMS indicators "percent of the day employed" and "number of days in the year employed." Any of these staff employed for 100% of each day for a portion of a year are counted proportionately.

(B) For classroom teachers, employment status is verified through "beginning and ending times of teaching" for each class taught and with the indicators "percent of the day employed" and "number of days in the year employed." Classroom teachers who teach at least four hours but less than 100% of the day or who work 100% of the day for a portion of the year are counted proportionately.

(C) For nurses, verification of status as a registered nurse (RN) must be supplied by the school district until this information is available through PEIMS.

(D) An eligible staff person who is employed by more than one district in a shared service arrangement or by a single district in more than one capacity among any of the eligible positions is counted in the number of staff qualifying for the additional state aid.

(d) Payment schedule. The payment schedule for additional state aid for professional staff salaries is determined by the commissioner.

(1) For districts earning state aid pursuant to TEC, Chapter 42, payments for additional state aid for professional staff salaries are made as part of allocations for the FSP, with the same schedule and method of payments.

(2) For districts incurring costs for wealth equalization pursuant to TEC, Chapter 41, the amount earned as additional state aid for professional staff salaries is paid directly to the district in accordance with the payment schedule for payment class 3. An initial determination is made as soon as practicable, with a final settle-up made during September of the following school year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 23, 1999.

TRD-9905334
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

Part IV. Texas Cosmetology Commission

Chapter 89. General Rules and Regulation

22 TAC §89.1, 89.5, 89.10

The Texas Cosmetology Commission proposes to amend §89.1, concerning administrative fines, §89.5, concerning license fees, and §89.10, concerning monthly hour reports.

The proposal of these sections are as a result of a comprehensive review of all the commission's rules in accordance with House Bill (HB) 1, §167 (section 167).

Delores L. Alspaugh, Executive Director, Texas Cosmetology Commission, has determined that for the first five-year period the rules are proposed, there will be fiscal implications for state or local government. Persons who fail to comply with this rule as proposed may be assessed administrative penalties for noncompliance.

Mrs. Alspaugh also has determined that for each year of the first five years the rules are proposed, the public benefit anticipated as a result of repealing the rules will be to eliminate confusing, repetitive terminology. There will be an effect on small businesses. There are anticipated economic costs to persons with the rules as proposed. Noncompliance with this rule as proposed may result in administrative penalties being assessed.

Comments on the proposed section may be submitted to Delores L. Alspaugh, Texas Cosmetology Commission, P.O. Box 26700, Austin, Texas 78755-0700.

The proposed amendments are in accordance with HB 1, §167.

Article 8451a, Vernon's Texas Civil Statutes, is affected by this proposed amendment.

§89.1. Administrative Fines.

(a) The commission shall set up a schedule of administrative fines in order to assess civil penalties. The commission desires to be both consistent and equitable and to consider and evaluate each case on an individual basis. The actual civil penalty which the commission assesses shall be based on the commission's consideration of the factors in the Cosmetology Act (Article 8451a, V.T.C.S.), but the fine for any one violation or rule adopted under The Cosmetology Act shall not exceed $1,000.

(b) Schedule of Fines: In accordance with Article 8451a, V.T.C.S, the commission shall adopt the following fine schedules for the first, second and third violation of the following practitioner, facility, and independent contractor licensing rules. For the fourth and subsequent offenses, the provisions of Article 8451a, V.T.C.S. will apply:
Figure 1: 22 TAC §89.1(b)
[~~Figure: 22 TAC §89.1(b)~~]

§89.5. License Fees.

(a) The fees pertain to the following licensees at all times [~~the time of renewal~~]:

(1) Individual Licenses: $43

(2) Instructor Licenses: $60

(3) Salon Licenses: $55

(4) Independent Contractor: $55

(b) The fee to issue a duplicate license for all licensees and establishments is $43.

(c) All licensees are required to submit a health certificate, not more than one year old, in addition to the proper renewal fee.

(d) All licensees other than salons or private beauty culture, vocational cosmetology, and post secondary schools must notify the commission not later than ten days following any change of address. The commission may send all notices on other information required by The Cosmetology Act or any commission rule to any licensee's last known address on file with the commission.

§89.10. Monthly Hour Report.

On a form prescribed by the commission, the school must display the monthly hour report showing a record of hours acquired by each student during the preceding month in an album or binder no later than the 10th day of each month. Each student must be given the opportunity to review, under supervision, his/her hours, and to sign or initial the report. The report shall be complete, accurate, and [~~must be~~] kept available for inspection by the student or a representative of the Texas Cosmetology Commission. One copy of the monthly hour report must be given to the commission inspector at each inspection visit. The copy must be signed by the school official. Students enrolled in a cosmetology or specialty course are prohibited from preparing hour reports or supporting documents. Student instructors may prepare hours reports. All information must be complete.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 18, 1999.

TRD-9905268
Delores Alspaugh
Executive Director
Texas Cosmetology Commission
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 454-4675

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter C. Charges for Support, Maintenance, and Treatment

25 TAC §§403.71-403.79

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) propose the repeals of §§403.71-403.79 of Chapter 403, Subchapter C, concerning charges for support, maintenance, and treatment. New §§417.101-417.110 of new Chapter 417, Subchapter C, concerning charges for services in TDMHMR facilities, are contemporaneously proposed in this issue of the *Texas Register*.

The repeals would allow for the adoption of new rules.

Bill Campbell, chief financial officer, has determined that each year of the first five years the proposed repeals are in effect, enforcing or administering the rules does not have foreseeable significant implications relating to cost or revenue of the state or local governments.

Mr. Campbell has also determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected as a result of the adoption of the new rules, which would replace the repealed rules, is the promulgation of clear and concise provisions governing how TDMHMR assesses fees for clients' support, maintenance, and treatment, which are consistent with state and federal law. It is anticipated that there would be no additional economic cost to persons required to comply with the proposed repeals.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses because the new rules, which would replace the repealed rules, do not place additional requirements on small business.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These sections are proposed for repeal under the Texas Health and Safety Code, §532.015, which provides the Texas MHMR Board with broad rulemaking authority; the Texas Health and Safety Code, §552.017, and §593.075, which require the board by rule to establish sliding fee schedules for the payment by clients' parents for the support, maintenance, and treatment of a minor client; the Texas Health and Safety Code, §552.013, which states that the state is entitled to reimbursement for the support, maintenance, and treatment of non-indigent patients of state mental health facilities; the Texas Health and Safety Code §593.078, which states that an adult resident of a state mental retardation facility and the resident's estate are liable for the costs of the resident's support, maintenance, and treatment; the Texas Health and Safety Code, §552.018, and §593.081, which provides for trust exemptions; and the Texas Health and Safety Code, §533.004, which authorizes TDMHMR to file a lien to secure reimbursement for the cost of providing support, maintenance, and treatment and which requires the board by rule to prescribe the procedures to contest charges for support, maintenance, and treatment.

These sections would affect the Texas Health and Safety Code, §532.015, §552.017, §593.075, §552.013, §593.078, §552.018, §593.081, and §533.004.

§403.71. Purpose.
§403.72. Application.
§403.73. Definitions.
§403.74. Determination and Notification of Fees.
§403.75. Appeal Process.
§403.76. Filing Notice of Lien.
§403.77. Exhibits.
§403.78. References.
§403.79. Distribution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 23, 1999.

TRD-9905329
Charles Cooper
Chairman Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 206-4516

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Chapter 417. Agency and Facility Responsibilities

Subchapter C. Charges for Services in TDMHMR Facilities

25 TAC §§417.101-417.110

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§417.101-417.110 of new Chapter 417, Subchapter C, concerning charges for services in TDMHMR facilities. The repeals of §§403.71-403.79 of Chapter 403, Subchapter C, concerning charges for support, maintenance, and treatment, are contemporaneously proposed in this issue of the *Texas Register*.

The new rules describe the assessment of fees for clients' support, maintenance, and treatment at facilities of the Texas Department of Mental Health and Mental Retardation; the process to appeal an assessed fee(s); and the process to file a notice of lien. The new rules clarify TDMHMR's process for assessing fees for a client's support, maintenance, and treatment. The new rules also provide simple and efficient procedures for appealing a fee, which will result in fair and expeditious decisions and which will adequately protect the procedural rights of all parties.

Bill Campbell, chief financial officer, has determined that for each year of the first five years the proposed new rules are in effect, enforcing or administering the rules does not have foreseeable significant implications relating to cost or revenue of the state or local governments.

Mr. Campbell has also determined that, for each year of the first five years the proposed new rules are in effect, the public benefit expected as a result of the adoption of the rules is the promulgation of clear and concise provisions governing how TDMHMR assesses fees for clients' support, maintenance, and treatment, which are consistent with state and federal law. It is anticipated that there would be no additional economic cost to persons required to comply with the proposed rules.

It is anticipated that the proposed new rules will not affect a local economy.

It is anticipated that the proposed new rules will not have an adverse economic effect on small businesses because they do not place requirements on small business different from those in the rules proposed for repeal.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These new sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas MHMR Board with broad rulemaking authority; the Texas Health and Safety Code, §552.017, and §593.075, which require the board by rule to establish sliding fee schedules for the payment by clients' parents for the support, maintenance, and treatment of a minor client; the Texas Health and Safety Code, §552.013, which states that the state is entitled to reimbursement for the support, maintenance, and treatment of non-indigent patients of state mental health facilities; the Texas Health and Safety Code §593.078, which states that an adult resident of a state mental retardation facility and the resident's estate are liable for the costs of the resident's support, maintenance, and treatment; the Texas Health and Safety Code, §552.018, and §593.081, which provides for trust exemptions; and the Texas Health and Safety Code, §533.004, which authorizes TDMHMR to file a lien to secure reimbursement for the cost of providing support, maintenance, and treatment and which requires the board by rule to prescribe the procedures to contest charges for support, maintenance, and treatment.

These sections would affect the Texas Health and Safety Code, §532.015, §552.017, §593.075, §552.013, §593.078, §552.018, §593.081, and §533.004.

§417.101. Purpose.

Pursuant to the Texas Health and Safety Code, Chapter 552, Subchapter B, and Chapter 593, Subchapter D, the purpose of this subchapter is to describe:

(1) the assessment of fees for clients' support, maintenance, and treatment at facilities of the Texas Department of Mental Health and Mental Retardation;

(2) the process to appeal an assessed fee(s); and

(3) the process to file a notice of lien.

§417.102. Application.

This subchapter applies to all facilities of the Texas Department of Mental Health and Mental Retardation that provide inpatient or residential services.

§417.103. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Adult - A person who is not a minor.

(2) Appellant - The person appealing a fee(s).

(3) Charges - The total amount of all fees.

(4) Client - Any person who is admitted to a facility and who is provided support, maintenance, and treatment as an inpatient or resident (i.e., a person to whom a bed is assigned by the facility).

(5) Current maximum rate - The rate, established by the department, that reflects the average daily cost of support, maintenance, and treatment per client for each facility. (A copy of the current maximum rates for all facilities may be obtained by contacting TDMHMR, Revenue Management, P.O. Box 12668, Austin, Texas 78701-2668.)

(6) Department - The Texas Department of Mental Health and Mental Retardation (TDMHMR).

(7) Facility - Any state hospital, state school, state operated community services, or state center operated by the department.

(8) Family member -

(A) Unmarried client age 18 or older - the client and his/her dependents.

(B) Married client of any age - the client, his/her spouse, and their dependents.

(9) Fee - A specific amount of money assessed, based on a single source of funds, that is owed monthly to a facility for a client's support, maintenance, and treatment.

(10) Hearing officer - The attorney assigned by the department's hearings office to conduct the hearing for an appeal of a fee(s).

(11) Minor - A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(12) Party - The appellant or the department.

(13) Person responsible for payment - The client, the client's spouse, the client's parent, or other person legally responsible for paying the charges for the client's support, maintenance, and treatment, either individually, in a representative capacity, or other legal capacity.

(14) Reimbursement manager - The department employee in charge of the reimbursement office at a facility.

(15) Responsible entity - A client's guardianship (not the guardian), estate, or trust.

(16) SMT - Support, maintenance, and treatment.

§417.104. Fee Assessment and Notification of Charges.

(a) The fee(s) for a client's SMT is assessed in accordance with this section.

(1) Charges will not exceed the facility's current maximum rate.

(2) Failure of the person responsible for payment to provide financial information upon request or to assign third-party benefits may result in charges equal to the facility's current maximum rate.

(3) A guardian's personal finances and assets are not considered in assessing fee(s).

(b) Upon a client's admission to a facility, or shortly afterward, the reimbursement manager shall provide the client and/or person responsible for payment with a property and financial statement form, referenced as Exhibit A in §417.108(1) of this title (relating to Exhibits), appropriate to the type of services provided to the client.

(c) Assessing fee(s) for minor clients.

(1) The following sources of funds are property from which the state may be reimbursed for a minor client's SMT and are considered separately in assessing a fee:

(A) third-party coverage of the minor client;

(B) the minor client's benefits from governmental and non-governmental agencies and institutions;

(C) child support ordered in a divorce proceeding and other personal income of the minor;

(D) the ownership of real and/or personal property by the minor client and/or guardianship; and

(E) the income of the minor client's parents as authorized by the Texas Health and Safety Code, §552.017, §593.075, and §593.076, in accordance with the Taxable Income of Parents formula, referenced as Exhibit B in §417.108(2) of this title (relating to Exhibits).

(2) Pursuant to Texas Health and Safety Code, §593.077, a judgment in a divorce proceeding that provides for child support payments (as referenced in paragraph (1)(C) of this subsection) does not limit the fee that may be assessed (except that it may not exceed the current maximum rate), nor does the judgment exempt either parent from liability for the charges.

(d) Assessing fee(s) for adult clients in mental health facilities. The following sources of funds are considered separately in assessing a fee:

(1) third-party coverage of the adult client;

(2) the adult client's benefits from governmental and non-governmental agencies and institutions;

(3) real and/or personal property owned by the adult client, spouse, and/or guardianship; and

(4) monthly gross income of the adult client (excluding income from the source described in paragraph (2) of this subsection) and income of the spouse, in accordance with the Adult Clients in Mental Health Facilities formula, referenced as Exhibit C in §417.108(3) of this title (relating to Exhibits).

(e) Assessing fee(s) for adult clients in mental retardation facilities. The following sources of funds are considered separately in assessing a fee:

(1) third-party coverage of the adult client;

(2) the adult client's benefits from governmental and non-governmental agencies and institutions;

(3) real and/or personal property owned by the adult client, spouse, and/or guardianship;

(4) the adult client's monthly net work earnings in accordance with the Adult Clients in Mental Retardation Facilities formula, referenced as Exhibit D in §417.108(4) of this title (relating to Exhibits); and

(5) income of the adult client (excluding income from the sources described in paragraphs (2) and (4) of this subsection) and income of the spouse.

(f) Trusts. The provisions of the Texas Health and Safety Code, §552.018 and §593.081, apply to the fee(s) assessment for a client who is a beneficiary of a trust or trusts.

(g) Notification of charges. After a fee(s) has been assessed, the reimbursement manager or designee shall provide written notification of charges to the person responsible for payment that includes:

(1) the date of the notification of charges;

(2) the name of the client receiving SMT from the facility;

(3) the fee(s) and the source(s) of funds used to assess the fee(s);

(4) the effective date(s) of the fee(s);

(5) the facility's current maximum rate;

(6) a statement that if the person has completed and submitted the appropriate property and financial statement form (referenced as Exhibit A in §417.108(1) of this title (relating to Exhibits)), then the person has the right to appeal if he or she disagrees with the fee(s) and:

(A) information regarding how to initiate an appeal; and

(B) a statement that an appeal must be initiated within 60 calendar days of the date of the notification of charges;

(7) a statement that the person is responsible for notifying the facility's reimbursement manager if there is a change in any of the sources of funds the department uses to assess a fee or a change in family status that would affect any assessed fee; and

(8) information on possible payments from a third-party payor.

(h) Subsequent submission of property and financial statement form.

(1) If the person responsible for payment has not completed and submitted the appropriate property and financial statement form (referenced as Exhibit A in §417.108(1) of this title (relating to Exhibits)), then the notification of charges (referenced in subsection (g) of this section) must also include:

(A) a blank property and financial statement form that is appropriate to the type of services provided to the client; and

(B) a statement that the form must be completed and submitted to the reimbursement manager within 10 working days of receipt.

(2) When the reimbursement manager receives the completed property and financial statement form, the reimbursement manager shall, within five working days:

(A) review the form;

(B) revise the fee(s) if appropriate; and

(C) inform the person responsible for payment:

(i) of the fee(s) amount;

(ii) that the person has a right to appeal if he or she disagrees with the fee(s); and

(iii) that an appeal must be initiated within 60 calendar days of the date of the notification of charges (referenced in subsection (g) of this section).

(i) Fee revision. The department shall determine if a fee revision is warranted each time the department receives information indicating:

(1) a change in any of the sources of funds the department uses to assess a fee; and

(2) a change in family status that would affect any assessed fee.

§417.105. Accruing Charges.

(a) Except when charging is prohibited by law or contract and subject to the provisions in this section, charges continue to accrue:

(1) for the entire period the client receives SMT at the facility;

(2) for the entire period of the client's absence from the facility, if the client remains under the care, custody, and control of facility personnel;

(3) for the entire period the client is absent from the facility for admission to an inpatient medical facility and charges for the medical services at the inpatient medical facility are not paid by a third-party payor; and

(4) for the first three days of the client's absence from the facility, other than an absence described in paragraphs (2) and (3) of this subsection, from which the client plans to return.

(b) The following are considered a full day at the facility:

(1) the day of the client's admission to the facility;

(2) the day of the client's death at the facility; and

(3) the day the client returns to the facility from an absence.

(c) The following are considered a full day away from the facility:

(1) the day of the client's discharge from the facility;

(2) the day of the client's transfer from the facility; and

(3) the day of the client's departure from the facility for an absence.

§417.106. Appeal Process.

(a) Right to appeal. If the person responsible for payment has completed and submitted the appropriate property and financial statement form (referenced as Exhibit A in §417.108(1) of this title (relating to Exhibits)) and the person disagrees with any fee(s) assessed by the department, then the person is entitled to appeal such fee(s).

(b) Obtaining forms to initiate an appeal. In order to appeal a fee(s), the person responsible for payment must notify the reimbursement manager at the facility providing SMT to the client of his or her intent to appeal the fee(s). Upon such notification, the reimbursement manager shall ensure that the person has completed and submitted the appropriate property and financial statement form before sending the person a copy of this subchapter and a Request for Appeal form (referenced as Exhibit E in §417.108(5) of this title (relating to Exhibits)).

(c) Initiating the appeal. The person responsible for payment initiates an appeal by completing, signing, and sending the Request for Appeal form (referenced in subsection (b) of this section or §417.107(a)(4) of this title (relating to Filing Notice of Lien)) to: Hearings Office, TDMHMR, P.O. Box 12668, Austin, Texas 78711-2668. The Hearings Office staff shall ensure an appropriate property and financial statement form, completed by the person responsible for payment, is on file at the facility's reimbursement office before scheduling a hearing.

(d) Representation.

(1) The appellant may represent himself or herself or use legal counsel, a relative, a friend, or other spokesperson.

(2) The department is represented by a department attorney.

(e) Type of hearing.

(1) The appellant may choose to:

(A) appear by telephone conference or have his or her representative appear by telephone conference at the hearing;

(B) appear in person or have his or her representative appear in person at the hearing in Austin; or

(C) have a document hearing in which the hearing officer makes a decision based solely upon documentation filed by the parties with neither party appearing.

(2) If the appellant chooses to appear by telephone or in person at the hearing, then the designated department attorney may choose to:

(A) appear by telephone conference at the hearing; or

(B) appear in person at the hearing in Austin.

(f) Scheduling the hearing. The hearing officer shall schedule the hearing to be held not later than the 40th day after the date the Request for Appeal form is received by the hearings office. The hearing officer shall consider any request for reasonable accommodations related to a disability of the appellant or the appellant's representative.

(1) If the appellant chooses to appear, then the hearing officer shall schedule a date, time, and location (and phone number if a party will be appearing by telephone conference) for the hearing. At least 20 calendar days before the hearing, the hearing officer shall notify the parties, in accordance with subsection (g) of this section, of the scheduled date, time, and location (and phone number) of the hearing.

(2) If the appellant chooses to have a document hearing, then at least 20 calendar days before the document hearing, the hearing officer shall notify the parties, in accordance with subsection

(g) of this section, of the date that all documentation must be filed with the hearings office and copies submitted to the other party or the other party's representative.

(g) Notification of parties.

(1) The appellant is notified by certified mail.

(2) The designated department attorney is notified by intra-agency mail, fax, or electronic mail.

(h) Privileges. No party is required to disclose communications between an attorney and the attorney's client, an accountant and the accountant's client, a husband and wife, a clergy-person and a person seeking spiritual advice, or the name of an informant, or other information protected from being divulged by substantive federal or state law.

(i) Ex parte communication. With the exception of communications regarding procedural matters, the hearing officer may not communicate with a party, directly or indirectly, on any issue of fact or law, unless both parties are present or the communication is in writing and a copy is delivered to both parties.

(j) Withdrawing. The appellant may withdraw the appeal or the department may withdraw the fee(s) being appealed at any time prior to the hearing. Upon withdrawal of either party, no hearing is held. The hearing officer will issue an order of dismissal and notify the parties of such dismissal in accordance with subsection (g) of this section.

(k) Settlement. At any time before the hearing, parties may enter into a settlement disposing of the contested issue(s). A settlement agreement must be in writing, signed by the parties or their representatives, and filed with the hearings office. Upon receipt of the settlement agreement, the hearing officer will issue an order of dismissal and notify the parties of such dismissal in accordance with subsection (g) of this section.

(l) Filing documents.

(1) Hearing at which the parties will appear in person or by telephone.

(A) If a party intends to introduce documents at the hearing, then the party shall file such documents with the hearings office and submit a copy of the documents to the other party or the other party's representative at least three days before the hearing. Failure to submit copies of documents to the other party will result in a continuance if requested by the party who did not receive the documents.

(B) At the hearing, the hearing officer may request either or both parties to file additional documents for consideration in making a decision. The hearing officer shall indicate in writing the date by which the additional documents must be received by the hearings office.

(2) Document hearing. If a party intends for the hearing officer to consider his or her documents at a document hearing, then the party shall file such documents with the hearings office and submit a copy of the documents to the other party or the other party's representative by the date identified by the hearing officer as described in subsection (f)(2) of this section. Failure to submit copies of documents to the other party will result in a continuance if requested by the party who did not receive the documents.

(m) Continuance. Each party is entitled to one continuance. The hearing officer may grant additional continuances on the request of either party provided the party shows good cause for requesting the continuance. A request for a continuance may be written or oral, and may be made before or during a hearing. If a hearing is continued, the hearing officer shall schedule the hearing to be continued on a day that is not later than the 45th day after the hearing was originally scheduled. The hearing officer must notify the parties, in accordance with subsection (g) of this section, of the continued hearing date within five working days of granting a continuance.

(n) Telephone conference.

(1) Telephone conference equipment used for a hearing must be capable of allowing the parties and the hearing officer to hear and speak to each other at all times during the hearing.

(2) If a party elected to appear by telephone, then on the date and time of the hearing, the hearing officer shall initiate telephone contact with the party using the telephone number provided by the party.

(o) Failure to appear. If the appellant fails to appear at the hearing, the hearing officer shall adjourn the hearing. If the appellant notifies the hearing officer within three working days after the hearing date and provides evidence of good cause for failing to appear and requests a continuance, the hearing officer shall grant a continuance. If the hearing officer has not been notified by the fourth working day after the hearing date, then the hearing officer shall close the record and consider all of the documents previously filed by both parties and prepare a decision based on such previously filed documents.

(p) Evidence.

(1) Documents. Documents filed as evidence with the hearings office are admissible without further proof or authentication.

(2) Testimony. All testimony offered at the hearing is admissible.

(q) Procedural rights. Each party has the right to:

(1) establish all pertinent facts and circumstances;

(2) present an argument without undue interference;

(3) question or refute any evidence; and

(4) make an audio recording of the hearing proceedings.

(r) Audio recording of hearing proceedings. If the hearing is not a document hearing, then the hearing officer shall make an audio tape recording of the hearing proceedings. The appellant may request and receive a copy of the audio tape at minimal charge.

(s) Record. The record of the hearing closes when the hearing is adjourned or at the end of the business day on the date that all documents are required to be filed. The record consists of:

(1) all documents submitted to the hearings office, together with the ruling on admissibility made by the hearing officer; and

(2) the audio recording of the hearing proceedings made by the hearing officer (as required in subsection (r) of this section), if the hearing was not a document hearing.

(t) Decision. Not later than the 10th day after the hearing record has closed, the hearing officer shall issue a decision. Hearing decisions must be based exclusively on evidence in the record. The decision shall be in writing, signed and dated by the hearing officer, and state:

(1) the names of the parties and their representatives (if any), and whether they appeared in person or by telephone, if the hearing was not a document hearing;

(2) the evidence in the record;

(3) findings of fact and conclusions of law, separately stated;

(4) whether the appealed fee(s) has been sustained, reduced, or increased; and

(5) the fee(s) amount.

(u) Effective date. A decision issued under this section is effective on the date it is signed by the hearing officer.

(v) Notice of decision. After the hearing officer signs the decision, the hearings office shall send a copy of the hearing officer's decision to the parties in accordance with subsection (g) of this section.

(w) Finality. The decision of the hearing officer is final. For the purpose of correcting a clerical error, the hearing officer retains jurisdiction for 20 calendar days after the date the decision is signed.

§417.107. Filing Notice of Lien.

(a) If the department intends to file a written notice of lien pursuant to the Texas Health and Safety Code, §533.004, then 30 calendar days prior to filing the written notice of the lien with the county clerk, the department shall notify by certified mail the person responsible for payment of the department's intent to file a lien. The notice to the person responsible for payment shall include:

(1) a statement of the unpaid charges;

(2) a copy of the statutory procedures related to filing a lien (Texas Health and Safety Code, §533.004);

(3) a copy of §417.106 of this title (relating to Appeal Process);

(4) a Request for Appeal form (referenced as Exhibit E in §417.108(5) of this title (relating to Exhibits)) and a statement that in order to stay the filing of the lien, the completed Request for Appeal form must be received by the hearings office within 30 calendar days after the date the notification of the department's intent to file a lien was mailed; and

(5) the name and phone number of the department staff sending the notification.

(b) If the person does not request an appeal within 30 calendar days after the date the notification of the department's intent to file a lien was mailed, then the department may proceed to file the written notice of lien.

(c) If the person requests an appeal and the hearing officer's decision:

(1) sustains the appealed fee(s), then the department may proceed to file the written notice of lien anytime after 30 calendar days of the date the notification of the department's intent to file a lien was mailed;

(2) reduces the appealed fee(s) to less than the assessed amount but more than zero, then the person must pay the reduced amount or the department may proceed to file the written notice of lien anytime after 30 calendar days of the date the notification of the department's intent to file a lien was mailed;

(3) reduces the appealed fee(s) to zero, then the department must withdraw its notice of intent to file a lien in writing; or

(4) increases the appealed fee(s), then the person must pay the increased amount or the department may proceed to file the written notice of lien anytime after 30 calendar days of the date the notification of the department's intent to file a lien was mailed.

§417.108. Exhibits.

The following exhibits are referenced in this subchapter:

(1) Exhibit A- Property and Financial Statement form (PFS-1) for mental health services and Property and Financial Statement form (PFS-2) or Form 1200-PFS for mental retardation services;

(2) Exhibit B - Taxable Income of Parents formula;
Figure 1: 25 TAC §417.108(2)

(3) Exhibit C - Adult Clients in Mental Health Facilities formula;
Figure 2: 25 TAC §417.108(3)

(4) Exhibit D - Adult Clients in Mental Retardation Facilities formula; and
Figure 3: 25 TAC §417.108(4)

(5) Exhibit E - Request for Appeal form.

§417.109. References.

Reference is made to the following state statutes.

(1) Texas Health and Safety Code, §533.004, §551.003, §552.017, §552.018, §§593.075-593.077, and §593.081;

(2) Texas Trust Code, Texas Property Code, §111.001, et seq.;

(3) Texas Probate Code; and

(4) Texas Property Code, Chapter 142.

§417.110. Distribution.

This subchapter shall be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) executive, management, and program staff of Central Office;

(3) superintendents and directors of all TDMHMR facilities;

(4) advocacy organizations; and

(5) upon request, to any client, a client's parent or spouse, person responsible for payment, or any interested individual.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 23, 1999.

TRD-9905328
Charles Cooper
Chairman Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 206-4516

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter B. Coastal Erosion Planning and Response

31 TAC §§15.21-15.23

The General Land Office (Land Office) proposes new Subchapter B, Coastal Erosion Planning and Response: §15.21, relating to Evaluation Process for Coastal Erosion Studies and Projects, §15.22, relating to Funding Projects from the Coastal Erosion Response Account, and §15.23, relating to Coastal Boundary Surveys. The Joe Faggard Coastal Erosion Planning and Response Act, 76th Legislature, Regular Session, Senate Bill 1690 (CEPRA) requires the Land Office to implement a program of coastal erosion avoidance, remediation, and planning.

The proposed rules outline the process by which the Land Office will evaluate and assist in the funding of coastal erosion studies and projects in cooperation with qualified project partners. CEPRA defines "qualified project partner" as "a local government, state or federal agency, institution of higher education, homeowners' association, or other public or private entity that enters into an agreement with the land office to finance, study, design, install, or maintain an erosion response project." The Land Office may expend funds from the coastal erosion response account, which was established by CEPRA, to support a study or project cooperatively undertaken by the Land Office and a qualified project partner. CEPRA requires qualified project partners to pay at least 25% of shared project costs that are identified in a project cooperation agreement.

Section 15.21 outlines the three-stage application process for entities that would like to become qualified project partners with the Land Office. Section 15.21(1) specifies the process the Land Office will use to evaluate project goal summaries submitted by potential project partners. These summaries must contain the information identified in §15.21(1)(A). The Land Office will evaluate project goal summaries based on the criteria in §15.21(1)(C) by weighting each criterion and generating a numerical score. If that score is sufficiently high, the Land Office will invite the potential project partner to become a qualified project partner and work cooperatively to evaluate alternatives to address erosion in the specified coastal area. The Land Office encourages potential project partners to submit additional information specified in §15.21(D) if that information is available when the project goal summary is prepared. Although the additional information will not be used by the Land Office to evaluate the project in the initial evaluation stage, the evaluation process in later stages may be expedited if the information has already been submitted.

Section 15.21(2) describes the second stage of the evaluation process. The second-stage evaluation begins with the Land Office and a potential project partner entering a project cooperation agreement, which will specify how the alternatives-evaluation process will be conducted cooperatively. By entering a project cooperation agreement, the potential project partner becomes a qualified project partner. The Land Office and qualified project partner will then cooperatively evaluate alternatives. The alternatives-evaluation process will include an evaluation of three factors, which will be weighted and scored by the Land Office: feasibility, funding commitments, and ability to leverage funding with sources other than the coastal erosion response account. If the Land Office's evaluation results in a determination that one of the preferred alternatives is a viable option for addressing erosion, the Land Office will request the qualified project partner to continue cooperatively working with the Land Office to seek funding for the preferred alternative. If the qualified project partner accepts the invitation, the Land Office will continue the evaluation into the third stage.

Section 15.21(3) details the final stage of the three-part evaluation process. The Land Office will further score the preferred alternative based on criteria specified in CEPRA. The Land Office will assign a total numerical score for each project that is evaluated through the three-stage process.

Section 15.22 concerns the final decision by the Land Office to assist in the funding of a project that has been evaluated in the three-stage process. If the Land Office decides to authorize project funding from the coastal erosion response account, the Land Office and qualified project partner will amend the project cooperation agreement to define explicitly the terms under which the Land Office will assist in funding the project. Standards for the qualified project partner's statutory requirement to pay at least 25% of shared project costs are described in §15.22(2). Section 15.23 addresses the coastal boundary survey requirement from CEPRA. If a coastal boundary survey has previously been conducted in the area where an erosion response project may be funded from the coastal erosion response account, §15.23(1) allows the Land Office to determine that current conditions are accurately reflected in the existing survey. Based on that determination, the Land Office has the discretion to determine that a new survey is not required before project construction. Section 15.23(2) requires surveys to locate the boundary based on when the original land grant was made. The boundary is determined in a different manner depending on whether the upland property was originally granted under the civil or common law.

Andrew Neblett, deputy commissioner for the resource management program, has determined that during the first five-year period the rules are in effect there will be fiscal implications to local governments that elect to sponsor erosion response projects or studies. Local governments have discretionary authority to enter into cost-sharing agreements with the Land Office that may include commitments to fund 25% or more of the shared costs of erosion response projects or studies. In an area where erosion response projects are constructed, local governments may benefit from increased tax revenues from enhanced property values.

Mr. Neblett also has determined that for each year of the first five-year period the rules are in effect, the public benefit will be that public beaches, public and private coastal property, and coastal natural resources will be preserved, enhanced, or restored, or that losses sustained by these public and private resources will be reduced. Mr. Neblett has determined that there will be no economic impact on small businesses or individuals.

The proposed rules are not subject to the Texas Coastal Management Program (CMP). Individual erosion response projects undertaken in compliance with these rules may be subject to the CMP, and consistency with the CMP will be individually determined at the appropriate stage of project planning.

Comments on the proposed rules may be submitted to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495, facsimile (512) 463-6311. To be considered, comments must be received by 5 p.m., Monday, October 4, 1999. The Land Office

has also scheduled hearings in Brownsville, Corpus Christi, and Houston where the public is invited to provide comments on the proposed rules. Information on the schedule for the hearings is published in the In Addition section of this issue.

The Land Office has prepared a takings impact assessment for the proposed rules and has determined that the new rules will not result in a taking of private real property. To receive a copy of the takings impact assessment, please send a written request to Ms. Milner.

The rules are proposed under the authority of Texas Natural Resources Code, §33.602(c), which gives the commissioner authority to adopt rules as necessary to implement a program of coastal erosion avoidance, remediation, and planning.

Texas Natural Resources Code §33.602(c) is affected by these new rules.

§15.21. Evaluation Process For Coastal Erosion Studies And Projects.

The General Land Office (Land Office) will evaluate potential projects for funding from the coastal erosion response account based on a three-stage evaluation process as described in this section.

(1) Initial evaluation–project goal summaries submitted to the Land Office by potential project partners.

(A) A potential project partner seeking funds from the coastal erosion response account must submit a project goal summary to the Land Office. The project goal summary must include the following:

(i) the name of the entity that will be potential project partner and the name, address, and telephone number of the person who will represent the potential project partner and be the primary point of contact with the Land Office;

(ii) the location and geographic scope of the erosion problem;

(iii) a description of the erosion problem and the severity of erosion in the area;

(iv) the economic impacts of erosion in the area;

(v) a description of how public infrastructure or resources have been impacted or threatened by erosion in the area;

(vi) the natural resource impacts of erosion in the area; and

(vii) the desired outcome or goals of seeking funding from the coastal erosion response account.

(B) The Land Office will accept project goal summaries by:

(i) mail sent to the General Land Office, Attention: Director, Coastal Projects Division, Stephen F. Austin Building, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495;

(ii) fax sent to (512) 475-0680; or

(iii) email sent to *coastalprojects@glo.state.tx.us*.

(C) The Land Office will evaluate project goal summaries received based on the following criteria: the severity of erosion in the area, the economic impacts of erosion, the degree to which public infrastructure or resources are at risk, and natural resources threatened by erosion. Each criterion will be weighted by the Land Office, and the Land Office will assign a total score to each project goal summary. The Land Office will conduct the initial evaluation in consultation and coordination with the potential project partner, as deemed necessary by the Land Office.

(D) The Land Office encourages potential project partners to submit additional information if it is available on the presumed causes of erosion, other potential project partners in the area, a recommendation on projects to address erosion in the area, and possible funding alternatives that have already been explored. The Land Office will not use this additional information during the initial evaluation stage, but it may be used to expedite the evaluation process in later stages.

(E) The Land Office will inform the potential project partner of the outcome of the initial evaluation and subsequently post the outcome on the Land Office's website at *www.glo.state.tx.us*.

(F) If, as a result of the initial evaluation, the Land Office chooses not to continue the evaluation into the next stage, the potential project partner will be notified in writing of this result. The Land Office will retain the project goal summary and may reevaluate it if future conditions warrant.

(G) If the Land Office's initial evaluation results in a score that is sufficiently high to warrant an evaluation of alternatives, the Land Office will invite the potential project partner to continue to work cooperatively with the Land Office by becoming a qualified project partner.

(2) Evaluation of alternatives with qualified project partners.

(A) The process of evaluating alternatives will begin with the Land Office and potential project partner entering a project cooperation agreement. Upon entering a project cooperation agreement, the potential project partner will become a qualified project partner. The Land Office and qualified project partner will cooperatively evaluate alternatives for addressing the erosion problem(s) identified in the project goal summary.

(B) The project cooperation agreement with the qualified project partner will explicitly define the activities to be undertaken by the Land Office and the qualified project partner in the evaluation of alternatives. The Land Office may, at its sole discretion, fund studies or activities that are part of the alternatives-evaluation process. Funds expended by a qualified project partner in conformance with the project cooperation agreement can be used to offset the qualified project partner's cost-sharing requirement.

(C) During the alternatives-evaluation process, the Land Office will evaluate projects based on the following criteria:

(i) the feasibility of alternative projects in meeting the goals of the project goal summary;

(ii) whether the qualified project partner has already made or received a binding commitment to fund all or a portion of a given project; and

(iii) whether funding can be leveraged with sources other than the coastal erosion response account.

(D) At the completion of the alternatives-evaluation process, the Land Office will choose one or more preferred alternatives for addressing the erosion problem in the area identified. Each preferred alternative will be scored based on the factors detailed in subparagraph (C) of this paragraph. If new information becomes available during the alternatives-evaluation stage, the Land Office may adjust the score for the initial evaluation of the project goal summary.

(E) Based on the scores from the first two stages of the evaluation process, the Land Office will determine whether any of the preferred alternatives is a viable project for funding from the coastal erosion response account. If the Land Office determines that one or more of the preferred alternatives are viable projects, the Land Office will request that the qualified project partner continue to work cooperatively to seek funding.

(3) Final prioritization of the preferred alternative by the Land Office.

(A) If the qualified project partner chooses to continue the application process for funding the preferred alternative, the Land Office will further score the preferred alternative based on the following criteria:

(i) the distribution of other erosion response projects in Texas that have received funding from the coastal erosion response account;

(ii) whether federal and local financial participation in the project is maximized;

(iii) whether the project achieves efficiencies and economies of scale;

(iv) the cost of the preferred alternative and the amount of money available in the coastal erosion response account;

(v) if the project is located within the jurisdiction of a local government that administers a beach/dune program, whether the local government is adequately administering its duties under the Open Beaches Act (Texas Natural Resources Code, Chapter 61) and Dune Protection Act (Texas Natural Resources Code, Chapter 63); and

(vi) whether the project will address an emergency situation in the area.

(B) After the Land Office assigns weighted, numerical scores to the criteria detailed in subparagraph (A) of this paragraph, the Land Office will generate a final cumulative score for each preferred alternative based on the scores achieved by the project in each of the three stages of the evaluation process.

§15.22. Funding Projects From the Coastal Erosion Response Account.

(a) The Land Office will rank each project that has been evaluated through the three-stage evaluation process based on the project's cumulative numerical score.

(b) If the Land Office determines that a project should receive funds from the coastal erosion response account, the Land Office and the qualified project partner will amend the project cooperation agreement that was entered into earlier in the evaluation process. The Land Office shall explicitly describe in the amended project cooperation agreement the terms and conditions under which the Land Office will fund the project.

(c) Cost-sharing requirement for qualified project partners. CEPRA requires qualified project partners to pay at least 25% of the shared project costs.

(1) The project cooperation agreement shall specify the terms of the qualified project partner's commitment to pay at least 25% of shared project costs.

(2) No costs incurred by a potential project partner before becoming a qualified project partner by entering into a project cooperation agreement with the Land Office can be used to offset the 25% cost-sharing requirement of CEPRA.

(3) In-kind goods or services provided by the qualified project partner after entering into a project cooperation agreement with the Land Office may offset the 25% cost-sharing requirement, if the qualified project partner provides the Land Office with a reasonable basis for estimating the monetary value of those goods or services. The decision on whether to allow any in-kind good or service to offset the 25% cost-sharing requirement is in the sole discretion of the Land Office.

(4) Local governments that receive financial assistance from the state to clean and maintain public beaches fronting the Gulf of Mexico under Chapter 25 of this title (relating to Beach Cleaning and Maintenance Assistance Program) will not be allowed to use funds received under that program to meet the 25% cost-sharing requirement.

§15.23. Coastal Boundary Surveys.

CEPRA mandates that no person may undertake an action relating to erosion response on or immediately landward of a public beach or submerged land until the person has conducted and filed a coastal boundary survey with the Land Office in conformance with Texas Natural Resources Code, §33.136.

(1) If a coastal boundary survey has previously been conducted and filed in the area of an erosion response project that may be funded from the coastal erosion response account, the Land Office shall determine whether that survey adequately reflects current conditions. If the survey adequately reflects current conditions, the Land Office may determine that a new coastal boundary survey is not required before the project is constructed. The decision on whether a new survey is required before construction of an erosion response project is in the sole discretion of the Land Office.

(2) The boundary depicted on any coastal boundary survey that is required before funding a project from the coastal erosion response account shall be delineated according to the law under which the upland property was originally granted by the sovereign.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 23, 1999.

TRD-9905327
Larry R. Soward
Chief Clerk
General Land Office
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 305-9129

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Part X. Texas Water Development Board

Chapter 359. Water Banking

The Texas Water Development Board (the board) proposes amendments to §359.3 and §§359.8-359.10, the repeal of §359.14 and new §359.14, concerning Water Banking. The amendments reflect changes to the administration of the Texas Water Bank in accordance with the changes made by Senate Bill 991 to the Texas Water Code, Chapter 15, Subchapter K. The amendments will allow the board to continue to administer the water bank to facilitate water transactions to provide sources of adequate water supplies for use within the State of Texas.

The amendment to §359.3 changes the language to more clearly state the authority of the board with regard to water and water rights, in accordance with the language of the statute, including specifically the ability to contract for the use of a water right.

The amendments to §§359.8-359.10 also have been proposed to more closely track the language of the statute. Amended subsection §359.8(e) proposes additional flexibility to the procedure to remove a deposit from the bank, allowing letters or other instruments to express the depositor's intent to remove the water right or the right to use water from the bank. A new subsection, §359.8(h), tracks the new authority granted to the board by Senate Bill 991 to enter into contracts for various services related to water conservation.

New §359.14, Fees, replaces the existing section on that subject, to update the section in accordance with Senate Bill 991 requirements. The new section establishes the ability for the board to assess fees on both deposits of rights into and transfers of rights while on deposit in the bank. After publication of notice in the *Texas Register* and appropriate consideration of the cost of operating the bank, the board would establish a fee schedule every two years. A fee could be assessed on deposit of the right into the bank, upon transfer of the right while in the bank, or both. Each fee could not exceed one percent of the monetary value of the water right or right to use water being deposited into the bank or transferred while on deposit in the bank.

Ms. Patricia Todd, Director of Accounting and Finance, has determined that for the first five-year period these sections are in effect there may be fiscal implications on state and local government as a result of enforcement and administration of the sections. Although the actual fiscal impact of the proposed rules cannot be estimated, those water right holders who are political subdivisions and who were exempt from fees under the existing rules, would be subject to the fees under the proposed rules, if they use the bank. For example, a water right valued at $700 per acre-foot, as is a reasonable value for some municipal water rights, would be assessed at up to $7 per acre-foot upon deposit of the right into, and/or transfer of the right from, the bank.

Ms. Todd has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide expanded uses of the water bank for water conservation efforts, the clarification of uses of the bank to effectuate sales of water, and the funding of water bank administration. Ms. Todd has determined there may be economic costs to small businesses or individuals required to comply with the sections as proposed. The fee for those individual water right holders who elect to deposit a right may be different under the proposed rule than under the existing rule. The amount of the fee under the proposed rule may be smaller or larger than the fee under the existing rule depending on the relative amount of the right and value of the right.

Comments on the proposed repeal, amendments and new section will be accepted for 30 days following publication and may be submitted to Suzanne Schwartz, General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

31 TAC §§359.3, 359.8-359.10, 359.14

The amendments and new section are proposed under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code and the laws of the state, and §15.703(b), which authorizes the board to adopt rules necessary for implementing the water bank.

Texas Water Code, Chapter 15, Subchapter K is the statutory provision affected by the proposed amendments and new section.

§359.3. Board Acquisition of Water and Water Rights.

The board may purchase, lease, hold, accept as a gift, and transfer [~~sell~~] water, water rights or the right to use water as necessary to operate the bank and facilitate the transfer of water, water rights or the right to use water from the bank for future beneficial use in Texas, including accepting and holding donations of water rights to meet instream, water quality, fish and wildlife habitat, or bay and estuary inflow needs in accordance with state law.

§359.8. Deposits, Studies, Transfers, Cancellation Protection, and Withdrawals.

(a)-(d) (No change.)

(e) [~~The water right or~~] That [that] portion of a water right or the right to use water that has been deposited in the bank may be withdrawn upon the depositor's completion of a withdrawal form, or acceptable substitute, and its submission to the administrator. A copy of this form, or acceptable substitute, must be submitted by the withdrawing depositor to the executive director of the commission at the same time it is submitted to the administrator. The withdrawal is effective upon the date of signature by the administrator on the withdrawal form or 30 days after the submission of the withdrawal form , or acceptable substitute, whichever occurs earlier. A water right may be withdrawn by the administrator under §359.6 of this title (relating to Bank Review).

(f)-(g) (No change.)

(h) With the approval of the board, the administrator may enter into contracts with persons to pay for water conservation feasibility studies, or the preparation of plans and specifications relating to water conservation efforts, or studies to estimate the amount of water that would be saved through the implementation of water conservation efforts.

§359.9. Registry of Buyers.

Persons who are potential buyers of water rights or the right to use water may request to be listed by the administrator in a registry at the bank. The request for registry listing shall be in a form or format provided by the administrator, and shall include all information the administrator deems necessary to prepare the registry of buyers.

§359.10. Registry of Sellers.

Persons who wish to disclose the availability of a water right or the right to use water or portion thereof for transfer, but do not wish to deposit the right in the bank, may request to be listed by the administrator in a registry at the bank. The request shall be in the format of a request for deposit and shall include all information the administrator deems necessary to prepare the registry of sellers. Any person who has listed a water right or the right to use water for sale in the registry shall notify the administrator within 30 calendar days of the date a contract to transfer a water right or the right to use water or portion thereof is signed.

§359.14. Fees.

(a) The executive administrator shall develop and implement, with board approval, a fee to be paid either upon deposit of a water right or right to use water into the bank, upon transfer of the water right or right to use water or portion thereof while on deposit in the bank, or upon both such occurrences. Such fee shall not exceed 1.0% of the value placed upon the water right or right to use water by the depositor upon deposit into the bank, and 1.0% of the value of the water right or right to use water transferred while on deposit in the water bank. Fees shall be due within 60 days of deposit of the water right or right to use water into the bank, and within 60 days of transfer of such rights. The value of the water right or right to use water shall be calculated upon deposit into the bank as the value placed on the water right or right to use water by the depositor. The value of the water right or right to use water shall be calculated upon transfer as the value of the water right sale or total value of any contract or contracts to use the water.

(b) Fees associated with deposits to or transfer from the Texas Water Trust of water rights or rights to use water are waived.

(c) At least once every two years, the executive administrator shall obtain board approval of the fee schedule. The executive administrator shall provide notice in the *Texas Register* 30 days before board action considering approval of such fee schedule, and shall provide copies of the proposed fee schedule upon request. In approving such fee schedule, the board shall consider the expenses of operating the bank.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 18, 1999.

TRD-9905267
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 20, 1999
For further information, please call: (512) 463-7981

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31 TAC §359.14

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code and the laws of the state, and §15.703(b), which authorizes the board to adopt rules necessary for implementing the water bank.

Texas Water Code, Chapter 15, Subchapter K is the statutory provision affected by the proposed repeal.

§359.14. Fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 18, 1999.

TRD-9905266
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 20, 1999
For further information, please call: (512) 463-7981

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Chapter 377. Hydrographic Survey Program

31 TAC §377.1, §377.2

The Texas Water Development Board (the board) proposes amendments to 31 TAC §377.1 and §377.2 concerning the Hydrographic Survey Program. The amendments are proposed to correct references to the chapter and to statutory authority.

Ms. Patricia Todd, Director of Accounting and Finance, has determined that for the first five- year period these sections are in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Todd has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of existing language. Ms. Todd has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed sections will be accepted for 30 days following publication and may be submitted to Ron Pigott, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, 512/936-2414.

The amendments are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

Texas Water Code, Chapter 15, Subchapter M, are the statutory provisions affected by the proposed amendments.

§377.1. Scope of Chapter [~~Subchapter~~].

This chapter [~~subchapter~~] shall govern the board's program of technical assistance for hydrographic surveys established by the Texas Water Code, Chapter 15, Subchapter M [~~L~~].

§377.2. Definitions.

Words and terms used in this chapter [~~subchapter~~] shall have the meanings provided by the Texas Water Code, Chapter 15, if such term is therein defined.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 18, 1999.

TRD-9905265
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: October 20, 1999
For further information, please call: (512) 463-7981

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 23. Vehicle Inspection

Subchapter A. Vehicle Inspection Station Licensing

23 TAC §23.8

The Texas Department of Public Safety proposes an amendment to §23.8, concerning the required checking of gas caps on vehicles as part of the vehicle inspection program. The amendment adds new paragraph (10) which provides that vehicle inspection stations must now have a department approved device for the checking of gas cap pressure in addition to the other required items indicated.

Tom Haas, Chief of Finance, has determined that for each year of the first five year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be fewer hydrocarbon emissions because of checking for and replacing defective gas caps. There will be a cost to small and large businesses as a result of having to purchase the gas cap testing equipment, however, because the inspection stations will charge an additional $2.00 fee per vehicle inspection, the cost of purchasing the gas cap tester should minimal. The cost to the public as a result of enforcing the rule will be the cost of the vehicle inspection, which will range from $12.50 to 25.50 depending on the type of vehicle inspection obtained.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Transportation Code, §548.002 and Texas Transportation Code, §548.051 as amended by Senate Bill 370 and which require the testing of a fuel tank cap during a vehicle inspection using a pressurized testing device approved by the department.

Texas Transportation Code, §548.002 and §548.051 are affected by this proposal.

§23.8. Equipment Requirements for all Classes of Vehicle Inspection Stations.

(a) Applicant shall be informed of the required equipment including such items as approved testing devices, tools, measuring devices, display board, brake machines, marked brake test area, and marked inspection test area.

(b) The minimum tools, equipment, and approved testing devices shall be kept and maintained in proper working condition at all times in the vehicle inspection station area.

(c) All testing equipment shall be approved by the department. All testing equipment shall be installed and used in accordance with the manufacturer's and department's recommendation. Equipment shall be arranged and located at or near the approved inspection area to obtain maximum efficiency.

(d) If equipment is used during the inspection procedure, the vehicle inspection station owner shall be responsible for its use, accuracy, and general maintenance. When equipment adjustments and calibrations are needed, the manufacturer's and department's specifications shall be followed. Defective equipment shall not be used until such deficiencies are corrected.

(e) Every certified inspector shall have a working knowledge of all testing devices used during inspections.

(f) Each vehicle inspection station is required to own and maintain, as a minimum, the equipment listed in paragraphs (1)-(9) of this subsection:

(1) Tools for making tests, repairs, and adjustments ordinarily encountered on those types of vehicles to be inspected;

(2) a measured and marked brake test area which has been approved by the department, or an approved brake inspecting device;

(3) a measuring device clearly indicating measurements of 12 inches, 15 inches, 20 inches, 24 inches, 54 inches, 60 inches, 72 inches and 80 inches to measure reflector height, clearance lamps, side marker lamps and turn signal lamps on all vehicles – vehicle inspection stations with only a motorcycle endorsement are not required to have an 80 inch measure;

(4) a laundry marking pen for completing the reverse side of the windshield inspection certificate;

(5) a scraping device for removing the old inspection certificate;

(6) a gauge for measuring tire tread depth;

(7) a 1/4 inch round hole punch if motorcycle-trailer certificates are issued;

(8) a brake pedal reserve checker with one-inch and two-inch clearances (except vehicle inspection stations with only a motorcycle endorsement);[~~and~~]

(9) a department approved device for measuring the light transmission of sunscreening devices. This paragraph does not apply to government stations or fleet stations which have provided the department annual written certification that the governmental entity or fleet station has no vehicles equipped with a sunscreening device. This requirement does not apply to vehicle inspection stations with only a motorcycle and/or trailer endorsement. The effective date for implementation of this paragraph is January 1, 1994;and[.]

(10) a department approved device with required adapters for checking fuel cap pressure. This paragraph does not apply to government stations or fleet stations which have provided the department annual written certification that the government entity or fleet station has no vehicles meeting the criteria for checking gas cap pressure or that these vehicles will be inspected by a public inspection station capable of checking gas caps. This requirement does not apply to vehicle inspection stations with only a motorcycle and/or trailer endorsement and certain commercial inspection stations that only inspect vehicles powered by a fuel other than gasoline. The effective date for implementation of this paragraph is January 1, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 20, 1999.

TRD-9905301

Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 424-2135

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37 TAC §23.15

The Texas Department of Public Safety proposes amendments to §23.15, concerning inspection station and certified inspector denial, revocation, suspensions, and administrative hearings. Amendments to the section are necessary in order to reflect changes resulting from the re-codification of Texas Civil Statutes to Texas Transportation Code and to delete language that is already covered by statute.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be more efficient administration of the vehicle inspection program. There is no anticipated cost to persons who are required to comply with the section as proposed. There is no anticipated cost to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Transportation Code, §548.002, which provides the department may adopt rules to administer and enforce this chapter.

Texas Transportation Code, §548.002 is affected by this proposal.

§23.15. Inspection Station and Certified Inspector Denial, Revocation, Suspensions, and Administrative Hearings.

(a) The department may deny an application for a license or revoke or suspend an outstanding certificate of any inspection station for the certificate or any person to inspect vehicles for any of the following reasons:

(1) issuing a certificate without required adjustments, corrections, or repairs having been made when an inspection disclosed the necessity for those adjustments, corrections, or repairs;

(2) refusing to allow the owner of the vehicle to have required corrections or adjustments made by any qualified person he may choose;

(3) issuing an inspection certificate without having made an inspection of the vehicle;

(4) knowingly or willfully issuing an inspection certificate for a vehicle without the required items of inspection or with items which were not at the time of issuance in good condition and in conformity with the laws of this state, or in compliance with rules of the commission;

(5) charging more than the required inspection fee;

(6) issuing an inspection certificate without being certified to do so by the department;

(7) proof of unfitness of applicant or licensee under standards set out in Texas Transportation Code, Chapter 548[~~Civil Statutes, Article 6701d~~], or in commission rules;

(8) material misrepresentation in any application or any other information filed under the Act or commission rules;

(9) willful failure to comply with the Act or any rule promulgated by the commission under the provisions of the Act;

(10) failure to maintain the qualifications for a license;

(11) any act or omission by the licensee, his agent, servant, employee, or person acting in a representative capacity for the licensee which act or omission would be cause to deny, revoke, or suspend a license to an individual licensee;

(12) fraudulently represent to an applicant that a mechanism or item of equipment required to be inspected must be repaired, adjusted, or replaced before the vehicle will pass inspection when that is not the case; or

(13) a conviction under the laws of this state, another state, or the United States of any crime which directly relates to the duties and responsibilities of a vehicle inspection station or inspector, as set out in §23.16 of this title (relating to Persons with a Criminal Background).

(b) When there is cause to deny an application for a certificate of any inspection station or the certificate of any person to inspect vehicles or revoke or suspend the outstanding certificate, the director shall, in less than 30 days before refusal, suspension, or revocation action is taken, notify the person in writing, in person, or by certified mail at the last address supplied to the department by the person, of the impending refusal, suspension, or revocation, the reasons for taking that action, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the director.

(c) The director, without a hearing, may suspend or revoke or refuse to issue any certificate if, within 20 days after the personal notice of the notice is sent or notice has been deposited in the United States mail, the person has not made a written request to the director for this administrative hearing.

(d) On receipt by the director of a written request of the person within the 20-day period, an opportunity for an administrative hearing shall be afforded as early as is practicable.

(e) Said hearing shall be held in accordance with Texas Transportation Code, Chapter 548, and applicable rules of the department.[~~In no case shall the hearing be held less than 10 days after written notification, including a copy of the charges, is given the person by personal service or by certified mail sent to the last address supplied to the department by the applicant or certificate holder.~~]

[~~(f) The administrative hearing in these cases shall be before the director or his designee. The director or his designee shall conduct the administrative hearing and may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, or documents.~~]

(f) [~~(g)~~] On the basis of the evidence submitted at the hearing, the director, acting for himself or upon the recommendation of his designee, may refuse the application or suspend or revoke the certificate.

(g) [~~(h)~~] Any person dissatisfied with the action of the director, [~~without filing a motion for rehearing,~~] may appeal the action

of the director in accordance with Texas Transportation Code, Chapter 548. [by filing a petition within 30 days after the action is taken in a district court in the county where the person resides or in a district court of Travis County, and the court is vested with jurisdiction, and it shall be the duty of the court to set the matter for hearing upon 10 days' written notice to the director and the attorney representing the director.]

[(i) The court in which the petition of appeal is filed shall determine whether any action of the director shall be suspended pending hearing, and enter its order accordingly, which shall be operative when served upon the director, and the director shall provide the attorney representing the director with a copy of the petition and order.]

[(j) The director shall be represented in these appeals by the district or county attorney of the county or the attorney general, or any of their assistants.]

(h) [(k)] The department will investigate all violations of Texas Transportation Code, Chapter 548 [Civil Statutes, Article 6701d, ˘ ˘ 140-142], and all violations of rules and regulations promulgated under Texas Transportation Code, Chapter 548[Civil Statutes, Article 6701d, ˘ ˘ 140-142].

(i) [(l)] Vehicle inspection station or certified inspector may waive the right to an administrative hearing in writing by completing Form VI-63, voluntary waiver of administrative hearing.

(j) [(m)] The procedure of the administrative hearing shall be covered by the general rules of practice and procedure of the Texas Department of Public Safety, Chapter 29 of this title (relating to Practice and Procedure), except where other provisions are provided herein.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 20, 1999.

TRD-9905302
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 424-2135

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Subchapter G. Vehicle Emissions Inspection and Maintenance Program

37 TAC §23.94

The Texas Department of Public Safety proposes new §23.94, concerning alternative vehicle emissions testing as part of the vehicle inspection program. The new section provides for circumstances under which the department may approve alternate vehicle emission testing, including onboard diagnostic testing. Language in the new sections provides the rule may not be more restrictive than federal regulations governing vehicle emission testing.

Tom Haas, Chief of Finance, has determined that for each year of the first five year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be reduced emissions affecting public health. There is no anticipated cost to small or large businesses. There is no anticipated economic cost to individuals.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Service, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The new section is proposed pursuant to Texas Transportation Code, §548.002 and Health and Safety Code, §382.0374 as amended by Senate Bill 370 and which authorize the department to allow alternate vehicle emission testing, including onboard diagnostic testing; setting criteria for approval and providing that the department's rule may not be more restrictive than federal regulations governing vehicle emission testing.

Texas Transportation Code, §548.002 and Health and Safety Code, §382.0374 are affected by this proposal.

§23.94. Alternate Vehicle Emission Testing.

(a) The Department of Public Safety with the approval of the Public Safety Commission may allow alternate vehicle emission testing, including onboard diagnostic testing if:

(1) the technology provides accurate and reliable results;

(2) the technology is widely and readily available to persons interested in performing alternate vehicle emissions testing; and

(3) the use of alternate testing is not likely to substantially affect federal approval of the state's air quality state implementation plan.

(b) This rule may not be more restrictive than federal regulations governing vehicle emissions testing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on August 20, 1999.

TRD-9905303
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XX. Texas Workforce Commission

Chapter 817. Child Labor

The Texas Workforce Commission (Commission) proposes an amendment to §817.4 and new §817.24, concerning child labor provisions.

The purpose of the amendment and new section is to implement House Bill 160, of the 76th Texas Legislative Session that relates to the regulation of certain sales and solicitations made

by children and related violations. It is the Commission's intent to encourage the safe employment of minors engaged in certain sales and solicitation activities and to enforce the penalties set forth in the Texas Labor Code. An amendment to §817.4 expresses the Commission's intent to define the scope of its enforcement of Texas Labor Code §51.0145 to be consistent with the legislative intent of that provision. New §817.24 clarifies the process by which an affected employer can comply with the requirement to obtain consent and provide information about solicitation trips. New §817.24 also limits solicitation trips to within 30 miles of the child's home to protect the safety, health and well-being of the child, unless the parent agrees in advance to a distance longer than 30 miles on the Commission-approved Parental Consent Form.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the amendment and new section will be in effect the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the amendment and new section;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendment and new section;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the amendment and new section;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the amendment and new section; and

There are no anticipated economic costs to persons required to comply with the amendment and new section.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the amendment and new section because, although small businesses would be required to send the Parental Consent Form and the required information to the Commission, the added cost as a result of the amendment and new section would be merely the cost of postage of approximately $.33 per employed child. That expense would be the same for large businesses as for small and would be minimal.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of these proposed sections.

Chester Skorupa, Director of Labor Law, has determined that for each year of the first five years the amendment and new section are in effect, the public benefit anticipated as a result of enforcing the amendment and new section will be to assist in ensuring safer employment of minors.

Comments on the proposal may be submitted to Chester Skorupa, Texas Workforce Commission Building, 101 East 15th Street, Ste. G-1, Austin, Texas 78778, (512) 491-4603. Comments may also be submitted via fax to (512) 834-3526 or e-mailed to: chester.skorupa@twc.state.tx.us. Comments must be received by the Commission within 30 days from the date of the publication in the *Texas Register*.

Subchapter A. General Provisions

40 TAC §817.4

The amendment is proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission programs and particularly Texas Labor Code Chapter 51 relating to employment of minors.

The amendment affects Texas Labor Code, Title 2 and Title 4 as well as Texas Government Code Chapter 656.

§817.4. Statement of Commission Intent.

(a) In adopting §817.21 of this title (relating to Limitations on the Employment of 14 and 15 Year Old Children) and §817.23 of this title (relating to Limitations on the Employment of 16 and 17 Year Old Children), the Commission intends for the federal child labor laws to govern the employment of children in Texas unless a provision of this chapter or Texas Labor Code, Chapter 51, clearly indicates otherwise. The Commission so intends only to the extent the federal laws are consistent with Texas Labor Code, Chapter 51.

(b) In adopting §817.24 of this title (relating to Limitations on the Employment of Children to Solicit), the Commission recognizes and hereby implements the legislative intent of Texas Labor Code §51.0145 to apply to the employment of children to sell or solicit products or services usually in a door-to-door manner, but which occasionally takes other forms, such as in parking lots or other common areas. The activity that is the subject of this regulation has been variously labeled over the years as candy sales, door-to-door sales, youth peddling, traveling youth crews, and other names. The activity usually involves one or more recruiters or drivers and at least one product supplier. The operation may involve taking children from lower income neighborhoods to sell in higher income neighborhoods, using a name and presentation that suggests the activity is aimed primarily at keeping the children out of gangs and off drugs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 1999.

TRD-9905277
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 463-8812

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Subchapter B. Limitations on the Employment of Children

40 TAC §817.24

The new section is proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission programs and particularly Texas Labor Code Chapter 51 relating to employment of minors.

The new section affects Texas Labor Code, Title 2 and Title 4 as well as Texas Government Code Chapter 656.

§817.24. Limitations on the Employment of Children to Solicit.

(a) A person may not begin the employment of a child to solicit as defined in Texas Labor Code §51.0145 and as described in §817.4(b) of this title (relating to Statement of Commission Intent), until the Commission's Labor Law Department has received:

(1) a copy of the signed Parental Consent Form approved by the Commission; and

(2) the information required by statute to be provided to the individual who gives consent.

(b) A copy of the Parental Consent Form may be obtained from the Commission's Labor Law Department.

(c) A person employing a child under Texas Labor Code §51.0145 shall limit each solicitation trip to within a radius of no greater than thirty miles from the child's home, unless the parent or other person identified in Texas Labor Code §51.0145(c)(1) signs a Parental Consent Form in advance of the solicitation trip specifically approving a greater distance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 1999.

TRD-9905278
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 463-8812

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TITLE 43. TRANSPORTATION

Part III. Automobile Theft Prevention Authority

Chapter 57. Automobile Theft Prevention Authority

43 TAC §§57.1-57.3, 57.6-57.15, 57.18-57.30, 57.33, 57.34, 57.36, 57.40-57.42, 57.44, 57.46, 57.49-57.57

The Automobile Theft Prevention Authority (ATPA) proposes amendments to chapter 57 in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, §167. See Texas Register (24 TexReg 3364) April 30, 1999. In accordance with §167, the ATPA reviewed this chapter and determined that it should be readopted, in part, with changes to §§57.2, 57.3, 57.4, 57.13, 57.14, 57.15, 57.18, 57.19, 57.20, 57.21, 57.22, 57.28, 57.30, 57.33, 57.34, 57.36, 57.42, and 57.51. The ATPA finds that the reasons for this chapter, with the proposed changes, continue to exist. The ATPA proposes that the provisions of §§57.43 and 57.45 be incorporated in other related ATPA rules for better organization and clarity. As a result, the ATPA has determined that §§57.43 and 57.45 should be repealed because the reasons for these sections will no longer exist. The ATPA has also determined that §§57.5 and 57.37 are not necessary. The repeal of these four sections is being proposed by a separate rulemaking this same date. Other proposed amendments in these sections and §§57.1, 57.6, 57.7, 57.8, 57.9, 57.10, 57.11, 57.12, 57.23, 57.24, 57.25, 57.26, 57.27, 57.29, 57.40, 57.41, 57.44, 57.46, 57.49, 57.50, 57.52, 57.53, 57.54, 57.55, 57.56, 57.57 are made for clarity and consistency as well as to update the rules to conform with current policy and practice. For example, §57.18's requirement to submit written notification to the ATPA director of any changes in the project director, financial officer, or authorized official has been amended to submit the written notification within five days from the date of the change. In §57.21, the option to allow grant funds to be obligated prior to the effective date or subsequent to the termination date of the grant period has been deleted. Grant funds, which are appropriated funds, may only be obligated during the fiscal year September 1st through August 31st after the project has been approved. In §57.22 requirement for prior approval for the release of grant funds has been amended to increase the threshold amount from $10,000 to $15,000 to provide for inflation and give grantee's greater flexibility. In §57.34, the blanket restriction on the use of grant funds for certain promotional and publicity items has been removed. Expenditure of funds for these items will be addressed as part of the grant application process.

Agustin De La Rosa, Jr., Director, has determined that, for each of the first five years that the proposed amendments will be in effect, there will be no additional fiscal implications for state and local governments as a result of enforcing or administering the amended rules. Mr. De La Rosa has also determined there will be no effect on small businesses.

Mr. De La Rosa has also determined that for each year of the first five years that the proposed amendments will be in effect, the public benefit anticipated will be more clearly stated and organized rules governing ATPA programs. Additionally, for the same period of time, Mr. De La Rosa has determined that there should be no additional economic cost to persons required to comply with the rules as proposed.

Comments on the proposed amendments may be submitted to Agustin De La Rosa, Jr., Director, Automobile Theft Prevention Authority, 200 East Riverside Drive, Austin, Texas 78704 for a period of 30 days from the date that the proposed actions are published in the Texas Register.

The amendments are proposed under Texas Civil Statutes, Article 4413(37) §6(a). The ATPA interprets §6(a) as authorizing it to adopt rules implementing its statutory powers and duties.

Texas Civil Statutes, Article 4413(37) §6(a) is affected by this proposal.

§57.1. Definitions [~~Legal Authorization~~].

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. ATPA-The Automobile Theft Prevention Authority. [~~These rules are promulgated under Texas Civil Statutes, Article 4413(37), §6(a), which provide the Automobile Theft Prevention Authority with the authority to adopt rules to implement its powers and duties.~~]

§57.2. Applicability.

(a) These rules shall apply only to applications and grants awarded to local general purpose units of government, state agencies, independent school districts, nonprofit, and for profit organizations under the ATPA Grant [~~Automobile Theft Prevention Authority Assistance~~] Program.

(b) The ATPA Grant [~~Automobile Theft Prevention Authority Assistance~~] Program is divided into five program categories which reflect the statutory purposes of the ATPA [~~Authority~~] as follows:

(1)-(4) (No change.)

(5) Public Awareness, [and] Crime Prevention , and Education.

§57.3. Compliance; Adoption by Reference.

Grantee/applicants shall comply with all applicable state and federal statutes, rules, regulations, and guidelines. The ATPA [Automobile Theft Prevention Authority (ATPA)] adopts by reference the following statutes, documents, and forms. Information regarding these adoptions by reference may be obtained from the Automobile Theft Prevention Authority, 200 East Riverside Drive, Austin, Texas 78704, (512) 416-4600: [P.O. Box 12428, Austin, Texas 78711, (512) 463-1919:]

(1)-(3) (No change.)

(4) Automobile Theft Prevention Authority Grant [Assistance] Program: application kit;

(5) Automobile Theft Prevention Authority Grant [Assistance] Program: Grant Administration Guidelines;

(6) ATPA [Automobile Theft Prevention Authority] Forms:

(A)-(G) (No change.)

§57.6. Grant Applications.

(a) Grant applications for the automobile theft prevention grant programs [assistance projects] must be prepared in accordance with all applicable documents, forms, and guidelines adopted by reference under §57.3 of this title (relating to Compliance; Adoption by Reference).

(b) Grant applications submitted to the ATPA [Automobile Theft Prevention Authority] must include the names, titles, addresses, and telephone numbers of the authorized official, project director, and financial officer of each grant submitted for consideration.

§57.7. Review of Grant Applications.

(a) The ATPA [Automobile Theft Prevention Authority (the Authority)] will review only those grant applications that are submitted in compliance with the applicable documents and forms adopted by reference under §57.3 of this title (relating to Compliance; Adoption by Reference).

(b) The ATPA [Authority] staff will review grant applications for compliance with ATPA [the Authority's] guidelines.

(c) The ATPA [Authority] staff may recommend award of a grant, award of a grant with modification, or rejection of a grant application.

(d) The ATPA [Authority] staff recommendations shall be based on applicable statutory requirements, rules, guidelines, fiscal constraints, and administrative policies.

§57.8. Revision of Grant Application.

The ATPA [Automobile Theft Prevention Authority] may require revision of a grant application to comply with all applicable state and federal laws, guidelines, rules, regulations, and applicable administrative and financial requirements for automobile theft prevention assistance projects.

§57.9. Nonsupplanting Requirement.

(a) Texas Civil Statutes, Article 4413(32a), §6(a)(7), requires [require] that state funds provided by this Act shall not be used to supplant state or local funds. Public Law 98-473 requires that federal funds provided by that Act shall not be used to supplant state or local funds.

(b) Each grantee shall certify that ATPA [Automobile Theft Prevention Authority (ATPA)] funds have not been used to replace state or local funds that would have been available in the absence of ATPA funds. The certification shall be incorporated in each grantee's report of expenditure and status of funds referred to under §57.3(6) of this title (relating to Adoption by Reference).

§57.10. Nonlobbying Certification.

(a) (No change.)

(b) A finding that a grantee has violated this certification shall result in the immediate termination of funding of the project and the grantee shall not be eligible for future funding from the ATPA [Automobile Theft Prevention Authority].

§57.11. Bonding and Insurance.

Each private nonprofit organization directly receiving grant funds from the ATPA [Automobile Theft Prevention Authority (ATPA)] must secure and maintain a commercial bond against the loss or theft of ATPA grant funds.

§57.12. Application for Supplemental Funds.

Grant applications for supplemental funds must comply with §§57.4, 57.6-57.11 of this title (relating to Eligible Applicants and Application Processing).

§57.13. Award and Acceptance of Grant Award.

(a) The ATPA [Automobile Theft Prevention Authority (ATPA)] shall notify a grant applicant of final action on its grant application.

(b) (No change.)

§57.14. Approval of Grant Projects.

(a) The ATPA [Automobile Theft Prevention Authority (the Authority)] will approve funding for projects on an annual basis, subject to continuation of funding through state appropriations and availability of funds.

(b) To be eligible for consideration for funding, a project must be designed to support one of the following ATPA [Authority] program categories:

(1)-(4) (No change.)

(5) Public Awareness, [and] Crime Prevention , and Education.

(c) In evaluating a project for funding, the ATPA[Authority] will consider:

(1)-(2) (No change.)

(3) the performance of an applicant on other projects funded by the ATPA [Authority];

(4) recommendations by ATPA [the Authority] staff on funding allocations for the grant year and on individual grant applications. Staff recommendations on individual grant applications will be based on staff's review and ranking of each grant application as reflected in the ATPA [Authority] Application Review Instrument for each application; and

(5) the total number of grant applications submitted for the grant year and by program category, in relation to the total grant money available and its allocation among the five program categories, as determined by the ATPA [Authority].

(d) Grant award decisions by the ATPA[Authority] are final and not subject to judicial review.

§57.15. Implementation of Grant.

Each grantee shall implement the grant within 45 days of the designated start date indicated on the grant award statement. Failure by the grantee to implement a grant within 45 days will be construed by the ATPA [~~Automobile Theft Prevention Authority (ATPA)~~] as the grantee's relinquishment of the grant award. Any exception to this rule will require the review and written approval of the ATPA [~~executive~~] director.

§57.18. Grant Adjustments.

The grantee must secure prior written approval from the ATPA [~~Automobile Theft Prevention Authority (ATPA) executive~~] director for any of the following:

(1)-(5) (No change.)

(6) other changes for which the grant agreement or uniform grant and contract management standards require prior approval. The grantee must provide written notification to the ATPA [~~executive~~] director within five days from the date of any change [~~of all changes~~] in the project director, financial officer, or authorized official.

§57.19. Grant Extensions.

A grantee may submit a written request for a grant extension prior to the end of the project grant period; however, only in extraordinary circumstances will an application for an extension of the project grant period be granted by the [~~executive~~] director of the ATPA [~~Automobile Theft Prevention Authority~~].

§57.20. Requests for Funds.

All grantee requests for funds shall be submitted to the ATPA [~~Automobile Theft Prevention Authority, Attention: Comptroller,~~] in accordance with the instructions provided by the ATPA and shall be in the form required by the ATPA. Requests for funds will not be honored until any special condition which is a part of the statement of grant award, and which requires a specified action by the grantee before grant funds may be released, has been satisfied.

§57.21. Obligation of Grant Funds.

Grant funds may not[~~,without advance written approval by the Automobile Theft Prevention Authority~~] be obligated prior to the effective date or subsequent to the termination date of the grant period. Obligations must be related to goods or services provided and used for approved purposes.

§57.22. Third Party Participation.

(a) (No change.)

(b) Contracts, including any amendments, must be reviewed and approved as to form by the ATPA director [~~Automobile Theft Prevention Authority~~], prior to the release of any funds under the contract when the amount is $15,000 [~~$10,000~~] or more.

§57.23. Financial, Progress, and Inventory Reports.

Each grantee shall submit financial, progress, and inventory reports in accordance with the instructions provided by the ATPA [~~Automobile Theft Prevention Authority (ATPA)~~]. All reports shall be submitted in accordance with the prescribed ATPA forms for such reports. Financial and inventory reports must be signed by the financial officer. Progress reports must be signed by the project director. Inventory reports are to accompany the final financial report.

§57.24. Deobligation of Grant Funds.

Any unobligated funds remaining with the grantee shall be returned immediately to the ATPA [~~Automobile Theft Prevention Authority~~] with the final financial report.

§57.25. Cancellation of Project.

The grantee shall notify the ATPA [~~Automobile Theft Prevention Authority~~], in writing, of the cancellation of any approved project immediately upon the determination to cancel the project.

§57.26. Misappropriation of Funds.

The grantee must, immediately upon discovery, report to the ATPA [~~Automobile Theft Prevention Authority~~] any evidence of misappropriation of funds.

§57.27. Withholding Funds from Grantees.

The ATPA [~~Automobile Theft Prevention Authority (ATPA)~~] may withhold funds from a grantee when determination is made that the grantee has failed to comply with established rules, guidelines, standard grant conditions, special grant conditions, or contractual agreements on which the award of such grant is predicated or when ATPA funds are depleted or insufficient to fund allocations.

§57.28. Conditions for Withholding Funds from Grantees.

(a) (No change.)

(b) Withholding funds from all projects. Funds may be withheld from all projects operated by a grantee for reasons which include, but are not limited to, the following:

(1) (No change.)

(2) failure to return to the ATPA [~~Automobile Theft Prevention Authority (ATPA)~~] within the required time any unused grant funds remaining on the expired grant; or

(3) (No change.)

(c) (No change.)

(d) Appeals to the ATPA [~~Automobile Theft Prevention Authority~~]. Grantees may, within 10 days of receiving notification, request in writing a reconsideration of the determination to withhold funds. The request shall be directed to the [~~executive~~] director of the ATPA, together with any documentation in support of the reconsideration. The [~~executive~~] director will review the determination to withhold funds based on the documentation submitted. The director will make a [~~and~~] final determination which will be transmitted in writing to the grantee.

(e) (No change.)

§57.29. Termination for Cause.

(a) The ATPA [~~Automobile Theft Prevention Authority (ATPA)~~] may terminate any grant for failure to comply with any of the following:

(1)-(3) (No change.)

(b)-(e) (No change.)

§57.30. Appeal of Termination of Grant.

(a) A grantee may appeal the termination of a grant by writing to the [~~executive~~] director of the ATPA [~~Automobile Theft Prevention Authority (ATPA)~~] within 10 days from the date of the suspension or termination notification.

(b) (No change.)

(c) The [~~executive~~] director of the ATPA shall consider any documentation submitted by a grantee in support of an appeal and make a recommendation to the ATPA on a grantee's appeal.

(d) The decision of the ATPA is final and not subject to judicial review. [~~The decision of the executive director of the ATPA and the ATPA members concerning an appeal of a termination shall be final unless overturned by a court of competent jurisdiction.~~]

§57.33. Uniform Crime Reporting.

Each criminal and juvenile justice agency receiving funds from the ATPA [~~Automobile Theft Prevention Authority (ATPA)~~], or that benefits from funds awarded by the ATPA to another agency must, as a condition precedent to any grant award, comply fully with reporting requirements of the Texas Uniform Crime Reporting Program, Department of Public Safety.

§57.34. Funding for Project Promotion.

Funds may be used by the ATPA and Grantees for promotional items to enhance auto theft crime prevention efforts. Items such as pens, magnets, tee-shirts, bags, or hats may be purchased with ATPA funds to distribute at Public Awareness/Education events. Funds may be provided for project promotion through paid advertisement, such as billboards, television, newspaper, or radio announcement. [~~Funds will not be provided for project promotion through paid advertisements, such as billboards, television, newspaper or radio announcements, or promotional items intended for personal retention, including, but not limited to, such items as matchbooks, bags, balloons, pens, pencils, tee-shirts, cups, windbreaker, or hats. Funding for this type of project promotion may be obtained through local donations and through media public service announcements.~~] Production costs for public service announcements are an allowable expense. It is the intent of the ATPA [~~Automobile Theft Prevention Authority~~] to promote the grant program and prevention efforts with administrative funds.

§57.36. Level of Funding for Grant Projects.

(a) (No change.)

(b) Projects that have been funded previously from federal or other private sources may apply for ATPA funding as continuation grants. The ATPA will assume funding of the project at a ratio level commensurate with the project's funding history.

(c)-(f) (No change.)

§57.40. Audit Requirements for Nonprofit Organizations.

(a)-(c) (No change.)

(d) Audit Reports. Grantees are required to forward a copy of each completed audit report to the ATPA [~~Automobile Theft Prevention Authority~~] immediately upon receipt of that report.

§57.41. Known or Suspected Violations of Laws.

Knowledge or suspicion of any legal violations that are encountered during audits–including fraud, theft, embezzlement, forgery, or serious irregularities–must be communicated in writing to the local prosecutor's office and the ATPA [~~Automobile Theft Prevention Authority~~] immediately upon discovery.

§57.42. Grantee's Response to Audit Exceptions.

(a) A grantee may, within a reasonable time not to exceed 10 working days, give notice of intent to submit documentation to respond to exceptions contained in an audit report by the ATPA [~~Automobile Theft Prevention Authority (ATPA)~~] or that has been forwarded to the ATPA by an independent auditor.

(b) A grantee may submit documentation, either in person or by mail, to the Automobile Theft Prevention Authority, 200 East Riverside, Austin, Texas 78704, Attention: Director.

§57.44. Audit Review Board.

(a) The Audit Review Board will consist of three members appointed by the ATPA director [~~Automobile Theft Prevention Authority, to include the Criminal Justice Division comptroller~~], who will review the documentation for legal, financial, and program acceptability under state rules, regulations, and guidelines.

(b) The Audit Review Board will make recommendations to the director for approval, disapproval, or approval as modified of audit exceptions. The determination by the director will be in writing to the grantee within 30 days.

§57.46. Refunds to the ATPA [~~Automobile Theft Prevention Authority~~] on Audit Review Board Determinations.

Grantees shall, within 30 days, refund all funds due after a final determination by the Audit Review Board and approval by the [~~executive~~] director of the ATPA [~~Automobile Theft Prevention Authority~~]. Failure to comply with this provision shall subject participants to the provisions of §57.28 of this title (relating to Conditions for Withholding Funds from Grantees).

§57.49. Audit.

(a) The ATPA [~~authority~~] may employ or retain the services of auditors for the purpose of assisting the ATPA [~~authority~~] to determine an insurer's compliance with the requirements of Texas Civil Statutes, Article 4413(37), §10.

(b) (No change.)

(c) The ATPA [~~authority~~] may assess to insurance companies charges for audit in cases where the companies' assertion of Refund Due was determined to be unfounded.

§57.50. Report to Department of Insurance.

If the ATPA [~~authority~~] determines that an insurer failed to pay or intentionally underpaid the fee required by Texas Civil Statutes, Article 4413(37), §10, the ATPA [~~authority~~] shall notify the Department of Insurance with the request that the Department revoke the insurer's certificate of authority.

§57.51. Refund Determinations.

(a) An insurer claiming an overpayment of the annual fees due the authority under Texas Civil Statutes, Article 4413(37), §10, must file a written claim for refund not later than [~~the later of~~] six months after the date the fees were paid to the ATPA.

[~~(1) November 1, 1997; or~~]

[~~(2) six months after the date the fees were paid to the authority.~~]

(b) The [~~executive~~] director or the ATPA [~~authority's~~] designee shall review the claim and obtain from the insurer any additional information, if any, that may be necessary or helpful to assist in the ATPA [~~authority's~~] determination. If an insurer refuses to provide the requested information, the refund may be denied in whole or in part.

(c) The director or the ATPA [~~authority's~~] designee is authorized to employ or retain the services of financial advisors to assist in the determination. The director or the designee shall prepare a written report to the ATPA [~~authority's board~~] based on the director's or the designee's review and containing [~~the~~] findings, conclusions, and a [~~the~~] recommendation.

(d) The ATPA [~~authority~~] shall base its determination on the documentary evidence considered by the director or the designee. The two insurance company representatives on the ATPA [~~authority~~] shall not participate in the determination. The ATPA [~~authority's~~] decision shall be based on a majority vote of the five remaining members. The ATPA [~~authority's~~] decision is final and is not subject to judicial review.

(e) Upon determining that an insurer is entitled to a refund, the ATPA[~~authority~~] shall notify the comptroller and request the comptroller to draw warrants on the funds available to the ATPA [~~authority~~] for the purpose of refunding monies overpaid.

§57.52. Charges for Copies for Public Records.

(a) The charges for copies of public records of the ATPA [~~authority~~] will be the charges established by the General Services Commission, codified at 1 TAC §§111.61-111.70 (cost of copies of open records).

(b) The ATPA [~~authority~~] may waive or reduce a charge if it determines that waiver or reduction is in the public interest.

§57.53. Border Solutions Advisory Committee.

(a) (No change.)

(b) Purpose and duties. The purpose of the border solutions advisory committee is to provide the ATPA [~~Automobile Theft Prevention Authority (authority)~~] the benefit of the members' collective expertise and experience to assist the ATPA [~~authority~~] in promoting the reduction of vehicle theft in Texas and the bordering States of Mexico and in establishing more effective cooperation, communication and understanding between the two countries' participating agencies. The committee is to advise the ATPA [~~authority~~] on issues affecting the auto theft rate along the Texas-Mexico Border, including ways to facilitate the location, recovery and return of vehicles from both sides of the Texas-Mexico Border, and to recommend to the ATPA [~~authority~~], for possible funding, mutually beneficial projects for the aggressive prosecution of vehicle theft and related crime along the Border.

(c) Composition and appointment of members. The border solutions committee shall consist of representatives from the governmental and private sectors in Texas and Mexico, including grantee and other law enforcement agencies, the insurance industry, and the National Insurance Crime Bureau. Each entity desiring to participate in the committee is limited to one representative member, and the committee may not exceed 24 members. The restriction on the number of members shall not limit the number of individuals who may attend and participate in committee meetings. Each participating entity shall designate its representative member for purposes of this subsection. If the number of participating entities exceeds 24, the ATPA [~~authority~~] shall determine the composition of the committee. Committee members may serve for the duration of the committee. If a committee member resigns or otherwise vacates his or her position, another individual representing the same organization may replace the outgoing member.

§57.54. Grantee Advisory Committee.

(a) (No change.)

(b) Purpose. The purpose of the grantee advisory committee is to give the ATPA [~~authority~~] the benefit of the members' collective expertise and experience to assist the ATPA [~~authority~~] in promoting the reduction of motor vehicle theft in Texas and in developing grant projects for that purpose. The committee will serve as liaison between the ATPA [~~authority~~] and grantees on grant project matters. The committee will convey program information to grantees and solicit input from grantees on issues and concerns affecting the ATPA [~~authority's~~] grant program. The committee will consider issues as they arise and convey these issues and related recommendations to the ATPA [~~authority~~] for its consideration.

(c) Composition and appointment of members. The grantee advisory committee shall consist of eight persons, seven of whom will be nominated by the members of the ATPA [~~authority~~]. Each ATPA [~~authority~~] member may nominate one person to serve on the committee. A member must represent an entity which is a current grantee of the ATPA [~~authority~~]. The chair of the ATPA [~~authority~~] shall appoint the eighth member whose work with a current grantee [~~.~~]includes public awareness relating to motor vehicle theft. Committee members serve a one-year term, beginning January 1 of each year. The ATPA [~~authority~~] shall appoint new members for the next year, no later than the December meeting of each year. If a committee member resigns or otherwise vacates his or her position prior to the end of a term, the ATPA [~~authority~~] shall appoint a replacement, as recommended by the appropriate ATPA [~~authority~~] member, to serve the remainder of the unexpired term.

§57.55. Insurance Fraud Advisory Committee.

(a) (No change.)

(b) Purpose. The purpose of the insurance fraud advisory committee is to give the ATPA [~~authority~~] the benefit of the members' collective expertise and experience to assist the ATPA [~~authority~~] in promoting the reduction of motor vehicle theft in Texas and in promoting communication and cooperation between Mexico and Texas on mutual opportunities to protect against motor vehicle theft and insurance fraud. The committee will consider issues relating to insurance fraud and its connection to the theft of motor vehicles in Texas, recommend solutions to the ATPA [~~authority~~], and encourage grantees to seek funding for anti-fraud projects. The committee will further consider and recommend ways in which the insurance industry might assist the ATPA [~~authority~~] in raising public awareness of insurance fraud and its economic impact.

(c) Composition and appointment of members. The insurance fraud advisory committee shall consist of no more than 19 persons appointed by the committee chair. The committee chair may appoint, by December of each calendar year, a co-chair. Such co-chair shall be a member of law enforcement from a current law enforcement grantee. At least one member of the committee shall be a current grantee. Other committee members shall be representatives from insurance companies in Texas, selected proportionately from different geographical sections of the state. Other members of the ATPA [~~authority~~] may nominate persons for appointment to the committee. Committee members may serve for the duration of the committee. If a committee member resigns or otherwise vacates his or her position, another individual representing the same organization may replace the outgoing member.

§57.56. General Requirements for Advisory Committees.

The border solutions advisory committee, the grantee advisory committee and the insurance fraud advisory committees are subject to the following provisions:

(1) Committee chair. The chair of each committee shall be appointed by the chair of the ATPA [~~authority~~] and shall be a current member of the ATPA [~~authority~~].

(2) Meetings. A committee shall meet at the call of the committee chair or the ATPA [~~authority~~]. Except for the grantee advisory committee which shall meet no more than six times each calendar year, a committee shall meet no more that two times each calendar year. Committee meetings are open to the public.

(3) Manner of reporting. The chair of a committee shall report, as needed, on committee activities to the ATPA [~~authority~~] during its regular meetings.

(4) Reimbursement of committee member expenses. The ATPA [~~authority~~] shall not reimburse committee members for travel, lodging, meals or other expenses related to service on a committee. Nor may committee members or committee participants pay for such expenses from ATPA grant funds unless approved by the legislature and the ATPA [~~authority~~].

(5) Evaluation of committee costs and benefits. By October 1 of each year, ATPA [~~authority~~] staff, in consultation with

each committee chair, shall evaluate for the previous fiscal year and report to the ATPA [~~authority~~] for each committee, on:

(A)-(B) (No change.)

(C) the costs related to the committees existence, including the cost of ATPA [~~authority~~] staff time spent in support of the committee's activities.

(6) Each committee is abolished on August 31, 2002, unless the ATPA [~~authority~~] amends this paragraph to establish a different date.

(7) Report to legislative budget board. As required by state law, the ATPA [~~authority~~] shall biennially report to the legislative budget board the information developed under paragraph (5) of this section in evaluating each committee's costs and benefits.

§57.57. Historically Underutilized Business (HUB) Program.
The ATPA [~~Automobile Theft Prevention Authority~~] adopts the rules of the General Services Commission relating to the Historically Underutilized Business (HUB) Program and codified at 1 Texas Administrative Code, Part V, Subchapter B, Chapter 111, §§111.11-111.16.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 1999.

TRD-9905280
Agustin De La Rosa
Director
Automobile Theft Prevention Authority
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 416-4600

♦ ♦ ♦

43 TAC §§57.5, 57.37, 57.43, 57.45

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Automobile Theft Prevention Authority or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Automobile Theft Prevention Authority (ATPA) proposes to amend chapter 57 relating to the ATPA by repealing §§57.5, 57.37, 57.43, 57.45, in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, §167. See Texas Register (24 TexReg 3364), April 30, 1999. In accordance with §167, the ATPA reviewed this chapter and determined that it should be readopted, in part, with changes to §§57.1, 57.2, 57.3, 57.6, 57.7, 57.8, 57.9, 57.10, 57.11, 57.12, 57.13-57.15, 57.18-57.22, 57.23, 57.24, 57.25, 57.26, 57.27, 57.28, 57.29, 57.30, 57.33, 57.34, 57.36, 57.40, 57.41, 57.42, 57.44, 57.46, 57.49, 57.50, 57.51, 57.52, 57.53, 57.54, 57.55, 57.56, 57.57. The ATPA finds that the reasons for this chapter, with the proposed changes, continues to exist. The provisions of sections 57. 43, 57.45 are being proposed for incorporation in other ATPA rules this same date by separate rulemaking. As a result, the Authority has determined that §§57.43, 57.45 should be repealed because the reasons for these sections will no longer exist. The ATPA has also determined that §57.5 and §57.37 are not necessary and should be repealed.

Agustin De La Rosa, Jr., Director, has determined that for each year of the first five year period after the repeal of the sections, there will be no additional fiscal implications for state or local governments. Mr. De La Rosa has determined there will be no effect on small businesses.

Mr. De La Rosa has also determined that for each year of the first five years after repeal, the public benefit anticipated as a result of the repeal will be more clearly stated and organized rules governing ATPA programs. Additionally, for the same period of time, Mr. De La Rosa has determined that there should be no additional economic cost to persons required to comply with the rules as proposed.

Comments on the proposal may be submitted in writing to Agustin De La Rosa, Jr., Director, Automobile Theft Prevention Authority, 200 East Riverside Drive, Austin, Texas 78704, for a period of 30 days following publication in this issue of the Texas Register.

The repeals are proposed under Texas Civil Statutes, Article 4413(37), §6(a). The ATPA interprets §6(a) as authorizing it to adopt rules implementing its statutory powers and duties.

Texas Civil Statutes, Article 4413(37) §§6a are affected by this proposal.

§57.5. Multijurisdictional Projects.

§57.37. Local Commitment.

§57.43. Documentation by Grantee.

§57.45. Report of Audit Review Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 1999.

TRD-9905297
Agustin De La Rosa
Director
Automobile Theft Prevention Authority
Earliest possible date of adoption: October 3, 1999
For further information, please call: (512) 416-4600

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 71. Office of the Secretary of State

The Office of the Secretary of State adopts the repeal of §§71.1-71.3, 71.5, 71.6, 71.11, 71.21-71.26, 71.40-71.48, 71.50 and simultaneously adopts new §71.1 and §71.21. The sections are adopted without change as published in the April 23, 1999, issue of the *Texas Register* (24 TexReg 3169) and will not be republished.

These revisions are the result of the review of this chapter under the §167 of Article IX, General Appropriations Act, as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3365). This revision adopts the repeal of §§71.1-71.3, 71.5,71.6, 71.11, 71.21-71.26,71.40-71.48 and 71.50 The repeals are necessary to remove rules that repeat the text contained in statutory language or in other rules. The rules concerning private use of the state seal of Texas are repealed in order to adopt them under new Chapter 72. The Office of Secretary of State adopts new §71.1, concerning the availability of public records. This new section reorganizes the provisions that are contained in existing §§71.6 and 71.21-71.26. New §§71.21 concerning service of process will replace rules repealed from Chapter 73.

One comment was received concerning the review of Chapter 71. The commenter recommended that the term "state seal of Texas" be shortened to "state seal". The commenter also recommended a change to the heading "private use of the state seal" because the standard designs described in §71.50 are not limited to private use. The Office of the Secretary of State agrees with the comments, and adopts a new chapter 72 concerning the state seal.

Subchapter A. Practice and Procedure

1 TAC §§71.1-71.3, 71.5, 71.6, 71.11

The repeals are adopted under the authority of Texas Government Code, Chapter 405. The Office of the Secretary of State certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 1999.

TRD-9905195

Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 6, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 463-5561

♦ ♦ ♦

Subchapter B. Inspection of Public Records

1 TAC §§71.21-71.26

The repeals are adopted under the authority of Texas Government Code, Chapter 405. The Office of the Secretary of State certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 1999.

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Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 6, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 463-5561

♦ ♦ ♦

Subchapter C. Private Use of the State Seal of Texas

1 TAC §§71.40-71.48, 71.50

The repeals are adopted under the authority of Texas Government Code, Chapter 405. The Office of the Secretary of State certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 1999.

TRD-9905197
Jeffrey H. Eubank

Assistant Secretary of State
Office of the Secretary of State
Effective date: September 6, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 463-5561

♦ ♦ ♦

Chapter 71. General Policies and Procedures

Subchapter A. Inspection of Public Information

1 TAC §71.1

The new section is adopted under the authority of Texas Government Code, Chapter 405.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 1999.

TRD-9905198
Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 6, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 463-5561

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Subchapter B. Service of Process

1 TAC §71.21

The new section is adopted under the authority of Texas Government Code, Chapter 405.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 1999.

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Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: September 6, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 463-5561

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Chapter 72. State Seal

1 TAC §§72.40-72.48, 72.50

The Office of the Secretary of State adopts new §§72.40-72.48 and 72.50, concerning the State Seal. The new sections are adopted without changes to the proposed text published in the April 23, 1999 issue of the *Texas Register* (24 TexReg 3171).

The new sections are adopted as part of a reorganization of rules in Chapter 71, concerning general policies and procedures. The rules concerning the state seal are adopted under this new chapter to separate them from the rules concerning inspection of public information. The text of these new sections is similar in content to the existing text under §§71.40-71.48 and 71.50, which are being repealed. These revisions are concurrent with rules review under the §167 of Article IX, General Appropriations Act, as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3365).

One comment was received concerning the state seal rules. The commenter recommended that the term "state seal of Texas" be shortened to "state seal". The commenter also recommended that the standard designs in §71.50 are not limited to private use of the state seal. He suggested the rules be renamed "State Seal." The Office agrees with the recommendations, which are reflected in the text of the adopted new rules in Chapter 72.

The new sections are adopted under the authority of Texas Government Code, Chapter 405.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 1999.

TRD-9905200
Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: August 27, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 463-5561

♦ ♦ ♦

Chapter 73. Statutory Documents

Subchapter C. Service of Process

1 TAC §§73.31-73.34

The Office of the Secretary of State adopts the repeal of §§73.31-73.34, concerning Service of Process without changes to the proposal published in the April 23, 1999 issue of the *Texas Register* (24 TexReg 3175).

These sections are being repealed as part of a revision to Chapter 71, of this title (relating to Practice and Procedure). The provisions contained in the service of process rules are being adopted new as §71.21.

No comments were received concerning the repeal.

The repeals are adopted under the authority of Texas Government Code, Chapter 405.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 1999.

TRD-9905201
Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: August 27, 1999
Proposal publication date: April 23, 1999

For further information, please call: (512) 463-5561

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Chapter 102. Health Spas

Subchapter D. Security

1 TAC §102.45

The Office of the Secretary of State adopts an amendment to §102.45(b) without changes to the proposed text as published in the July 16,1999, issue of the *Texas Register* (24 TexReg 5283).

Section 102.45(b) concerns the filing of a certificate of deposit as security under the Health Spa Act. The amendment removes the requirement to provide an "original certificate of deposit" when a certificate of deposit is filed as security pursuant to Section 10 of the Health Spa Act. Many banks no longer issue original certificates of deposit. Rather, a book entry is made to reflect such deposits. This amendment is adopted in order to conform §102.45 to current industry practice.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, Section 2001.004 (1) and the Health Spa Act, Texas Civil Statutes, Article 5221l, Section 26 which provide the Secretary of State with the authority to prescribe and adopt rules. The amendment affects the Texas Civil Statutes, Article 5221l, Section 10(a) & (d).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 1999.

TRD-9905224
Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: August 27, 1999
Proposal publication date: July 16, 1999
For further information, please call: (512) 475-0775

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TITLE 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

Chapter 1. Consumer Credit Commissioner

Subchapter A. Regulated Loan License

Division 1. General Provisions

7 TAC §1.7, §1.8

The Finance Commission of Texas (the commission) adopts the repeal of §1.7 and §1.8. This repeal is necessary as the sections relate to prohibitions on authorized lenders under authority of Chapter 3, Texas Civil Statutes, Article 5069.301 *et seq.*, which was repealed by the 75th Legislature. These rules have also been reviewed as part of a rule review required under House Bill 1, Article IX, Section 167, 75th Legislature. Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old Chapters 3 through 5. This repeal is adopted without changes to the proposal as published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5284).

The commission received a comment letter from the Texas Financial Services Association that primarily affects the proposed rules that would take the place of the rules proposed for repeal. The agency is postponing consideration of several of the proposed rules to more closely study the proposed language. Therefore, the commission will also postpone consideration of the companion rules 7 TAC §§1.4, 1.10, and 1.11 proposed for repeal.

The repeal is adopted under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeal will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeal are Texas Civil Statutes, Article 5069, Chapter 3A, Subchapter K. §1.7 Solicitation of Borrowers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 1999.

TRD-9905314
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 9, 1999
Proposal publication date: July 16, 1999
For further information, please call: (512) 936-7640

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Division 9. Collection Practices

7 TAC §1.151, 1.152, 1.154-1.156

The Finance Commission of Texas (the commission) adopts the repeal of §§1.151, 1.152, and 1.154-1.156. This repeal is necessary as the sections relate to prohibitions on authorized lenders under authority of Chapter 3, Texas Civil Statutes, Article 5069.301 *et seq.*, which was repealed by the 75th Legislature. These rules have also been reviewed as part of a rule review required under House Bill 1, Article IX, Section 167, 75th Legislature. Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old chapters 3 through 5. This repeal is adopted without changes to the proposal as published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5284).

The agency received no comments on the proposal.

The repeal is adopted under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeal will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeal are Texas Civil Statutes, Article 5069, Chapter 3A, Subchapter K., §1.151, Collection Practices.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 1999.

TRD-9905315
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 9, 1999
Proposal publication date: July 16, 1999
For further information, please call: (512) 936-7640

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Division 10. Advertising

7 TAC §§1.171, 1.173-1.179

The Finance Commission of Texas (the commission) adopts the repeal of §§1.171, and 1.173-1.179. This repeal is necessary as the sections relate to prohibitions on authorized lenders under authority of Chapter 3, Texas Civil Statutes, Article 5069.301 *et seq.*, which was repealed by the 75th Legislature. These rules have also been reviewed as part of a rule review required under House Bill 1, Article IX, Section 167, 75th Legislature. Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old Chapters 3 through 5. This repeal is adopted without changes to the proposal as published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5285).

The agency received no comments on the proposal.

The repeal is adopted under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeal will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeal are Texas Civil Statutes, Article 5069, Chapter 3A, Subchapter K.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 9, 1999
Proposal publication date: July 16, 1999
For further information, please call: (512) 936-7640

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Subchapter K. Probitions on Authorized Lenders

7 TAC §§1.851, 1.853, 1.855-1.858, 1.860-1.863

The Finance Commission of Texas (the commission) adopts new §§1.851, 1.853, 1.855-1.858, and 1.860-1.863, concerning prohibitions on authorized lenders as provided in Subchapter K, Chapter 3A, Article 5069. Section 1.861 is being adopted with nonsubstantive changes to the proposed text as published in the July 16, 1999, issue of the *Texas Register* (24 TexReg 5285). Sections 1.851, 1.853, 1.855-1.858, 1.860, 1.862, and 1.863 are being adopted without changes and will not be republished.

Simultaneously, the Finance Commission is repealing various rules and adopting these rules in their place. These rules being repealed were reviewed and those being proposed to be adopted here were evaluated and an assessment made that the reasons for (re)adopting the rule continues to exist. The commission received one comment letter from the Texas Financial Services Association about the proposed rules. The agency chose to delay action on §1.854 and §1.859 due to the comments received. The agency also received a request from another industry trade association to delay action on §1.852.

Section 1.851 addresses the prohibitions on obligating a consumer on more than one loan contract with the purpose or effect of obtaining a higher interest charge than the statute would allow on a single loan for the same aggregate amount as prescribed by Article 5069-3A.851. The rule serves to clarify and identify situations that result in a violation. The rule also provides that refunds may be required to correct violations. The rule is necessary to effectuate the intent of the statute and to prescribe procedures for handling violations of the statute. The commenter stated that they would prefer to see subparagraph (c) modified to clarify that it applies to "a loan made pursuant to Subchapter K in another office". The rule as proposed applies to any loan contract made under Chapter 3A. Loan contracts made under Chapter 3A may be made under Subchapter E, Subchapter F, or Subchapter G. Therefore, it would be inappropriate to reference a loan made pursuant to Subchapter K in the rule. The provisions of subparagraph (c) are designed to apply the provisions of Article 3A.851(a). That section of law clearly states that the duplication prohibition applies to loans made under the authority of Article 3A.301(a) and Article 3A.402. When the rule is read in concert with the applicable provision of law, the commission believes that the rule is not in need of further clarification. The commission respectfully disagrees with the comment.

Section 1.853 further clarifies the prohibition for licensees on misleading advertising found in Section 341.403 of the Finance Code. The rule defines phrases and practices that will be considered misleading. This section will benefit the consumer public by eliminating or reducing confusing and potentially misleading advertising.

Section 1.855 restricts licensees from using mailing pieces that resemble negotiable instruments. Advertising using facsimile negotiable instruments is confusing and misleading to consumers. This rule intends to protect consumers from misleading advertising.

Section 1.856 permits licensed lenders to publicly display their status as licensed and examined lenders.

Section 1.857 and §1.858 prescribe the disclosure requirements for advertising closed-end and open-end transactions. The rules also provide that a lender who complies with the Federal Truth-In-Lending Act is deemed to comply with the section. The rules are intended to provide consumers with accurate, comparable information for shopping for credit products.

Sections 1.860-1.863 address collection practices of licensed lenders. These rules detail procedures for collecting debts, including who may be contacted regarding a debt and when

a lender may communicate with a borrower. The rules are intended to prevent abusive and harassing collecting practices and to assure lawful remedies are used to collect debts.

Section 1.861. The commenter states that subsection (e) conflicts with the provisions of subsections (a) and (b) and that subsection (e) should be expanded to include collection contacts with the borrower's spouse. The commission agrees to modify the rule accordingly.

The adoption is necessary due to the repeal of the former Article 5069, Chapters 3, 4, and 5 and the adoption of new Article 5069-3A.001 *et seq.* Generally, these procedures are well established and are commonly used throughout the regulated industry. These rules should serve, however, to clarify the calculations and procedures.

The new sections are adopted under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

Texas Civil Statutes, Article 5069-3A, Subchapter K is affected by these new sections.

§1.861. Collection Contacts.

(a) A licensee or the licensee's agent shall have the right to contact any person in order to secure information concerning a borrower unless any person other than the borrower, the borrower's spouse, a member of the borrower's household, a comaker, endorser, surety, or guarantor of the obligation, objects to any contact by a licensee or the licensee's agent. Upon receipt of the objection, the licensee or agent, shall cease and desist from any further contact with the person.

(b) A licensee or the licensee's agent shall not solicit the payment of all or any part of any debt subject to this title from any person other than the borrower, the borrower's spouse, a member of the borrower's household, a comaker, endorser, surety, or guarantor of the obligation.

(c) Without the prior written consent of the borrower given directly to the licensee or the express permission of a court of competent jurisdiction, a licensee may not communicate with a borrower in connection with the collection of a loan at any unusual time or place. In the absence of any knowledge to the contrary, a licensee can assume that the convenient time for communicating with a borrower is after 8:00 a.m. and before 9:00 p.m., local time at the borrower's location.

(d) Without the prior written consent of the borrower given directly to the licensee or the express permission of a court of competent jurisdiction, a licensee may not communicate with a borrower in connection with the collection of a loan at the borrower's place of employment if the licensee knows or has reason to believe that the borrower's employer prohibits the borrower from receiving the communication.

(e) Without the prior written consent of the borrower given directly to the licensee or the express permission of a court of competent jurisdiction, a licensee may not communicate any information pertaining to a debt or obligation unless the person receiving the information is the borrower, the borrower's spouse, the borrower's attorney, a consumer reporting agency, another creditor, or the attorney of the creditor. Unless notified pursuant to subsection (a), this prohibition does not apply to a licensee seeking information about the location of the borrower.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 1999.

TRD-9905313
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: September 9, 1999
Proposal publication date: July 16, 1999
For further information, please call: (512) 936-7640

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Chapter 3. State Bank Regulation

Subchapter B. General

7 TAC §§3.36-3.38

The Finance Commission of Texas (the commission) adopts amendments to §§3.36-3.38, concerning the imposition and collection of ratable and equitable fees from state banks, foreign bank branches, foreign bank agencies, and foreign bank representative offices, to provide for recovery of the cost of maintenance and operation of the Texas Department of Banking (the department) and the cost of enforcing Finance Code, Title 3, Subtitles A and G, during the 2000-2001 biennium. Section 3.36 is adopted with changes to the proposed text as published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5094). Section 3.37 and §3.38 are adopted without changes to the proposed text and will not be republished.

The amendments to §§3.36-3.38 increase the annual assessment fees for all banks, foreign bank branches, and foreign bank agencies, and impose annual assessment fees for all foreign bank representative offices. In addition, the amendments clarify the procedure for the billing and payment of such fees, and further clarify the method in which all banks, foreign bank branches, and foreign bank agencies will calculate average off-book assets in computing assessable assets. Finally, the amendments implement new Finance Code, Title 3, Subtitle G, Chapters 201-204, enacted by House Bill 2066, §1.001, 76th Legislature, effective September 1, 1999.

The commission received no comments regarding the proposals. However, a minor non-substantive revision is made to §3.36(j) to clarify that a foreign bank representative office will not be subject to the annual assessment if the foreign bank maintains a foreign bank branch or foreign bank agency in this state.

The amendments are adopted pursuant to Finance Code, §§11.301, 31.003(a)(4), and 39.002, as well as new Finance Code, §201.003(a)(4), as added by House Bill 2066, §1.001, 76th Legislature (1999), effective September 1, 1999. These statutes authorize the commission to adopt rules providing for the recovery of the cost of maintenance and operation of the department and the cost of enforcing Finance Code, Title 3, Subtitles A and G, through the imposition and collection of ratable and equitable fees for notices, applications, and examinations.

§3.36. Annual Assessments and Specialty Examination Fees.

(a) Authority. The assessment schedule contained in this section is made under the authority contained in Finance Code, §31.003(a)(4) and §204.003(b).

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Assessable assets–The sum of on-book assets and average off-book assets of a bank, foreign bank branch, or foreign bank agency.

(2) Average off-book assets–The average of the off-balance sheet items reported by a bank in its most recent March 31st call report and the three immediately preceding call reports, as adjusted under subsection (c) of this section and pursuant to the instructions accompanying the assessment form applicable to and submitted by the bank, foreign bank branch, or foreign bank agency.

(3) Call report–The quarterly, consolidated report of condition and income (including domestic and foreign subsidiaries) promulgated in a form by the Federal Financial Institutions Examination Council and prepared and filed by a bank, foreign bank branch, or foreign bank agency under state and federal law.

(4) Examination frequency–The frequency of which a bank is subject to examination by the department. The criteria for placement into one of three examination frequencies are set forth in Commissioner Policy Memorandum Number 1003.

(5) On-book assets–The total assets reported by a bank, foreign bank branch, or foreign bank agency on the balance sheet contained in its most recent March 31st call report.

(c) Calculation of average off-book assets. A bank, foreign bank branch, or foreign bank agency must calculate a four-quarter average of off-book assets, as adjusted under this subsection, using the most recent March 31st call report and the three preceding call reports, as a component of assessable assets. In general, the bank, foreign bank branch, or foreign bank agency must sum all line items for which values are included on "Schedule RC-L-Off Balance Sheet Items," which could result in assets of the institution, with the exception of:

(1) Amount of financial standby letter of credit conveyed to others;

(2) Amount of performance standby letter of credit conveyed to others;

(3) Participations in acceptances conveyed to others by the reporting bank, foreign bank branch, or foreign bank agency; and

(4) All line items related to derivative products as identified by the department.

(d) Annual assessment for banks, foreign bank branches, and foreign bank agencies. The department will establish the annual assessment for each bank, foreign bank branch, and foreign bank agency effective September 1 of each year. Each bank, foreign bank branch, and foreign bank agency must pay to the department the annual assessment fee, in quarterly installments as billed effective September 1, December 1, March 1, and June 1 of each year, except that an installment may be adjusted under subsections (f) and (g) of this section. To facilitate collection, the department may require each bank, foreign bank branch, and foreign bank agency to pay quarterly installments through electronic funds transfer on each effective billing date. Assessments will be calculated on the total assessable assets. The assessment will be calculated on the basis of the factors identified in and in the manner described in §3.37 of this title (relating to Calculation of Annual Assessment for Banks) or §3.38 of this title (relating to Calculation of Annual Assessment for Foreign Bank Branches and Agencies).

(e) Review of assessment factors. The department will review all appropriations authorities, expenditure patterns, and other costs related to bank, foreign bank branch, or foreign bank agency examination and supervision functions, and present to the finance commission no less frequently than once each biennium such information and a calculation chart that sets forth the annual assessment factors.

(f) Interim adjustments.

(1) If the size, condition, or other characteristics of a bank change sufficiently during a year to cause the bank to fall into a different category of examination frequency, the department will adjust the annual assessment to the appropriate rate beginning with the first billed quarterly installment after the change in examination frequency.

(2) In the event of an acquisition or merger involving a surviving state bank, foreign bank branch, or foreign bank agency, the department will adjust the annual assessment to reflect the result of the acquisition or merger beginning with the first billed quarterly installment after the consummation of the transaction. The asset group will be calculated on the basis of the combined assessable assets, including branches, of the surviving bank, foreign bank branch, or foreign bank agency.

(3) A financial institution converting to a state bank must pay to the department an assessment beginning in the quarter of the conversion to reflect only the quarter or quarters of the year in which the financial institution is a state bank.

(4) Each bank, foreign bank branch, and foreign bank agency, on the due date of an assessment installment, must pay to the department the full quarterly installment of the assessment for the next three-month period without proration for any reason.

(g) Adjustment of an installment. The commissioner may, after review and consideration of actual expenditures to date and projected expenditures for the remainder of the fiscal year, lower the aggregate amount of an installment and bill each bank, foreign bank branch, and foreign bank agency a proportionally lower amount, without the prior approval of the finance commission.

(h) Specialty examination fees.

(1) Examinations of fiduciary activities and other special examinations and investigations, including but not limited to examinations of bank holding companies, interstate branches of state banks in Texas as host state, affiliates, and third-party contractors, are subject to a separate charge to cover the cost of time and expenses incurred in these examinations.

(2) The fee for an examination under this subsection will be calculated at a uniform rate of $500 per examiner per day to cover the cost of the examinations including the salary expense of examiners plus a proportionate share of department overhead allocable to the examination function. The commissioner may lower the uniform rate without the prior approval of the finance commission.

(3) In connection with an examination under this subsection, the regulated entity or other legally responsible party shall pay to the department the examination fee set forth in paragraph (2) of this subsection, and shall also pay to the department an amount for actual travel expenses incurred by the examiners, including mileage, public transportation, food, and lodging.

(i) Special assessments. The finance commission may approve a special assessment to cover material expenditures, such as major facility repairs and improvements and other extraordinary expenses.

(j) Annual assessment for foreign bank representative offices. The annual assessment fee for foreign bank representative offices will be $2,500, and will cover the cost of examinations and all associated expenses. A foreign bank representative office will not be subject to the annual assessment fee if the foreign bank maintains a foreign bank branch or foreign bank agency in this state subject to assessment under subsection (d) of this section. Each foreign bank representative office subject to the annual assessment under this subsection must pay to the department the annual assessment fee effective September 1 of each year. To facilitate collection, the department may require each foreign bank representative office to pay the annual assessment fee on September 1 of each year through electronic funds transfer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 1999.

TRD-9905304
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Effective date: September 9, 1999
Proposal publication date: July 16, 1999
For further information, please call: (512) 936-7640

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TITLE 13. CULTURAL RESOURCES

Part II. Texas Historical Commission

Chapter 13. State Cemetery

13 TAC §§13.1-13.2

The Texas Historical Commission adopts the repeal of §13.1 and §13.2 regarding the State Cemetery, without changes, to the proposed text as published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2559).

Repeal of this chapter was needed due to a conflict with Texas Government Code, §2165.256(d), (e), passed by the 75th Texas Legislature and placed into effect September 1, 1997. Chapter 13 rules were adopted after the 74th Texas Legislature gave the agency a lead role in the review of applications for burial in the Texas State Cemetery. Authority for that review was shifted to the State Cemetery Committee by the 75th Texas Legislature, and thus the agency no longer has need for the rules in Chapter 13.

No comments were received regarding adoption of this repeal.

The repeal is adopted under §442.005(q), Chapter 442 of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter. No other statutes, articles, or codes are affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 1999.

TRD-9905205
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: September 6, 1999
Proposal publication date: April 2, 1999
For further information, please call: (512) 463-6100

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TITLE 16. ECONOMIC REGULATION

Part IX. Texas Lottery Commission

Chapter 401. Administration of State Lottery Act

Subchapter D. Lottery Game Rules

16 TAC §401.302

The Texas Lottery Commission adopts amended section 16 TAC §401.302, relating to relating to instant tickets, without changes to the proposed text published in the July 9, 1999 issue of the *Texas Register*, (24TexReg5115).

The proposed amendments will clarify and identify additional types of play styles used in instant ticket formats and determining the eligibility of prize winning instant tickets, as well as clarify the Commission's obligations to withhold taxes and other offsets from lottery prizes.

No comments were received regarding the proposal.

The amendment is adopted under Texas Government Code, Section 466.015 which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery and the laws under the Commission's jurisdiction, and the Texas Government Code, Chapter 2001, which provides for the adoption of administrative rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 11, 1999.

TRD-9905064
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: August 31, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 344-5113

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16 TAC §401.304

The Texas Lottery Commission adopts amended section 16 TAC §401.304, relating to on-line games rules (general), without changes to the proposed text published in the July 9, 1999 issue of the *Texas Register*, (24TexReg5115).

The amended section will clarify the commission personnel responsible for oversight of on-line game drawings and allow the executive director to terminate an on-line game. The new

section is necessary to ensure the integrity and security of the lottery games.

No comments were received regarding the proposal.

The amendment is adopted under Texas Government Code, Section 466.015 which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery and the laws under the Commission's jurisdiction, and the Texas Government Code, Chapter 2001, which provides for the adoption of administrative rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9905065
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: August 31, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 344-5113

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16 TAC §401.309

The Texas Lottery Commission adopts amended section 16 TAC §401.309, relating to assignment of lottery installment prize payments, without changes to the proposed text published in the July 9, 1999 issue of the *Texas Register*, (24TexReg5115).

The amended section will establish the procedures to be followed if a lottery installment prize winner or its assignee chooses to assign lottery installment prizes. September 1, 1999 marks a change in the assignability provisions of the State Lottery Act. House Bill 1799 was adopted that set forth certain provisions that must be followed in order for lottery installment winners to assign their future installment payments. The proposed section is necessary to implement the statutory provisions and to preserve the integrity and security of the lottery.

Comments were received regarding the proposal. A public hearing was held on July 22, 1999 to receive public comments on the rule. Irvin & Associates, appeared representing itself, and as a member of the Texas Millionaire Family, and stated that they was in favor of the proposed rule. An individual appeared and was in favor of the rule, except did not agree that the last two years should be excluded from the possibility of assigning. Other entities appeared at the public hearing, but did not offer any comments for or against the proposed section. An individual filed written comments to the proposed rule commenting that the provisions of House Bill 1799 and the proposed rule regarding third party creditor rights and the consent of spouses was troubling and suggesting that the proposed rule include additional safeguards regarding spouses who are in existence, but do not consent to the assignment. The commenter states that the community property rights of the existing non-joining spouse should be considered and addressed in the Commission's proposed section. The comment also suggests that the Commission authorize a working group to study these matters and amend the proposed rule as necessary at that point. No other written comments were received regarding the proposed rule.

The Commission can not agree with the commenter that the last two years should be included in the assignments because that is the express statutory language of House Bill 1799. As to the other commenter, the Commission can not agree that further changes should be made to the proposed section addressing "third party rights" and existing spouses who do not affirmatively consent to the assignment. Those concerns, as addressed in House Bill 1799, will be considered by the district court during the judicial proceedings. In addition, the Commission does not necessarily agree, absent the terms of House Bill 1799, that third party rights, such as creditors or spousal consent should be included in the proposed section. The Commission's administrative rules require that there is only one claimant per ticket, and in the situation of a married claimant, that claimant has the option of claiming the ticket in his or her individual capacity or as some other legal entity. Insofar as the "third party rights" to the installment payments, the Commission does not agree that those rights are necessarily properly asserted against the Commission. Finally, the Commission believes that HB 1799 and the proposed section are sufficient to guide the judicial proceedings, and the Commission declines to delay consideration of the proposed section at this time. The Commission will monitor the situation and be prepared to amend the proposed section in the future if necessary.

The amendment is adopted under Texas Government Code, Section 466.015 which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery and the laws under the Commission's jurisdiction, and the Texas Government Code, Chapter 2001, which provides for the adoption of administrative rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 11, 1999.

TRD-9905066
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: August 31, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 344-5113

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter S. Core Curriculum Transfer and Field of Study Curricula

19 TAC §§5.391, 5.400, 5.402

The Texas Higher Education Coordinating Board adopts amendments to §§5.391, 5.400, 5.402 concerning Program Development (Core Curriculum Transfer and Field of Study Curricula). Section 5.391 is adopted with changes to the proposed text as published in the May 28, 1999 issue of the *Texas Register* (24

TexReg 3967). Section 5.400 and §5.402 are being adopted without changes and will not be republished.

The proposed amendments will update existing rules to reflect a change in the title of Coordinating Board publication, Lower Division Academic Course Guide Manual, mentioned in the existing rules, and will link this official publication to the Texas Common Course Numbering System referred to in the legislation implemented through these rules.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under Texas Education Code, Section 61.822, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Program Development (Core Curriculum Transfer and Field of Study Curricula).

§5.391. Requirements and Limitations.

(a) Each institution of higher education shall identify in its undergraduate catalog each lower division course that is substantially equivalent to an academic course listed in the current edition of the Lower Division Academic Course Guide Manual.

(b) Each university must offer at least 45 semester credit hours of academic courses that are substantially equivalent to courses listed in the Lower Division Academic Course Guide Manual including those that fulfill the lower-division portion of the institution's Core Curriculum.

(c) All public colleges and universities must accept transfer of credit for successfully completed courses identified in subsections (a) and (b) of this section as applicable to an associate or baccalaureate degree in the same manner as credit awarded to non-transfer students in that major.

(d) Each institution shall be required to accept in transfer into a baccalaureate degree the number of lower division credit hours in a major which are allowed for their non-transfer students in that major; however,

(1) No institution shall be required to accept in transfer more credit hours in a major than the number set out in the applicable Coordinating Board approved Transfer Curriculum for that major, as prescribed by the current issue of the Coordinating Board's guide to transfer curricula and transfer of credit, Transfer of Credit Policies and Curricula.

(2) In any major for which there is no Coordinating Board approved Transfer Curriculum, no institution shall be required to accept in transfer more lower division course credit in the major applicable to a baccalaureate degree than the institution allows their non-transfer students in that major.

(3) A university may deny the transfer of credit in courses with a grade of "D" as applicable to the student's field of study courses, core curriculum courses, or major.

(e) All senior institutions of higher education in Texas shall provide support services for transfer students equivalent to those provided to non-transfer students regularly enrolled at the institutions, including an orientation program for transfer students equivalent to that provided for entering freshman enrollees.

(f) No university shall be required to accept in transfer or toward a degree, more than 66 semester credit hours of academic credits earned by a student in a community college. Universities, however, may choose to accept additional credit hours.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 1999.

TRD-9905239
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: September 6, 1999
Proposal publication date: May 28, 1999
For further information, please call: (512) 483-6162

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Chapter 12. Proprietary Schools

Subchapter B. Basic Standards

19 TAC §§12.41, 12.46, 12.47, 12.50

The Texas Higher Education Coordinating Board adopts amendments to §§12.41, 12.46, 12.47, 12.50 concerning Proprietary Schools (Basic Standards). Sections 12.41, 12.46, and 12.47 are adopted with changes to the proposed text as published in the May 28, 1999 issue of the *Texas Register* (24 TexReg 3967). Section 12.50 is being adopted without changes and will not be republished.

The proposed amendments would rearrange requirements for library/learning resources within the rules for consistency, specify minor revisions to curriculum requirements, and specify the circumstances under which student transcripts must be issued and may be legally withheld.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under Texas Education Code, Section 132.032, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Basic Standards).

§12.41. Minimum Standards for Applied Associate Degrees.
The standards specified in this Subchapter apply to proprietary institutions offering applied associate degrees. Private post-secondary institutions seeking authority to offer a baccalaureate or higher degree shall seek approval from the Board and are subject to the standards contained in Chapter 5, Subchapter K, of this title (relating to Private and Out-of-state Public Degree-Granting Institutions Operating in Texas).

(1) Application for a Certificate of Authorization. The application for a certificate of authorization to offer a degree shall contain, at minimum, all information, documentation, and material required by the Guidelines for Instructional Programs in Workforce Education. In addition, the application shall contain a description of the purpose of the institution, names of sponsor or owners of the institution, regulations, rules, constitutions, bylaws, or other regulations established for the governance and operation of the institution; the names and addresses of the chief administrative officer, and the principal administrators and each member of the board of trustees or other governing boards. In addition, the application shall contain a full description of the admission requirements and a description of the facilities and equipment utilized by the institution. No less than 30 days prior to implementation of the program, the institution shall submit the names and addresses of the faculty who

will teach in the program of study, with the highest degree held by each.

(2) Qualifications of Institutional Officers. The character, education, and experience in higher education of governing board members, administrators, supervisors, counselors, agents, and other institutional officers shall be such as may reasonably ensure that students will receive education consistent with the objectives of the course or program of study.

(3) Instructional Assessment. Provisions shall be made for the continual assessment of the program of study, including the evaluation and improvement of instruction.

(4) Curriculum. The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Substantially all of the courses in the program of study shall be offered in organized classes by the institution.

(5) General Education. The degree program shall contain a general education component consisting of the number of credit hours specified in the Guidelines for Instructional Programs in Workforce Education.

(A) This component shall be drawn from each of the following areas: humanities and fine arts, social and behavioral science, natural sciences and mathematics. It shall include courses to develop skills in written and oral communication and in basic computer operation. Courses designed to correct deficiencies, remedial courses, and leveling courses may not count toward course requirements for the degree.

(B) The institution may arrange for all or part of the general education component to be taught by another institution with the following provisions: there shall be a written agreement between the institutions to provide the general education component, courses shall be offered in organized classes, and the providing institution shall be accredited by a recognized accrediting agency or shall possess a Coordinating Board certificate of authorization to grant degrees.

(6) Credit for Prior Learning. If an institution awards credit for prior learning obtained outside a formal collegiate setting, the institution shall establish and adhere to a systematic method for evaluating that prior learning, equating it with course content appropriate to the institution's authorized degree program(s). The method of evaluating prior learning shall be subject to ongoing review and evaluation by the institution's teaching faculty. In no instance shall course credit be awarded solely on the basis of life experience or years of service in a position or job. Recognized evaluative examinations such as the advanced placement program or the college-level examination program may be used to evaluate prior learning.

(7) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide good quality education and training.

(8) Financial Resources and Stability. The institution shall have the adequate financial resources and financial stability to satisfy the financial regulations of the Texas Workforce Commission, the United States Department of Education if the institution participates in Title IV financial aid programs, and the institution's accrediting agency. The institution shall furthermore have sufficient financial reserves so that it would be able to teach-out currently enrolled students if it were unable to admit any new students.

(9) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports shall be in accordance with generally accepted accounting practices.

(10) Academic Freedom and Faculty Security. The institution shall adopt and distribute to all members of the faculty a statement assuring freedom in teaching, scholarly inquiry, and dissemination of knowledge. This requirement in no way limits an institution's legitimate evaluation of faculty member performance.

(A) All policies concerning promotion, non-renewal or termination of appointments, including for cause, shall be described in writing and furnished to all faculty members.

(B) The specific terms and conditions of employment of each faculty member shall be clearly described in writing and furnished to each faculty member.

(11) Academic Records. A system of record keeping shall be established and maintained in a manner consistent with accepted and professional practice in higher education. Records shall be securely maintained at all times. Contents of records shall, at minimum, include attendance and progress or grades. Two copies of the information necessary to generate student transcripts shall be maintained at separate locations. At least one copy shall be secured in a manner which is resistant to destruction by fire and natural disaster.

(12) Catalog. The information described by paragraphs (A)-O) of this subsection shall be provided to prospective students prior to enrollment. The institution shall, on an annual basis, furnish the Board with a copy of its most current catalog and a current roster of all faculty members including names, addresses, teaching assignments, and highest degree earned. The institution shall provide students and other interested persons with a catalog or brochure containing at minimum:

(A) the mission of the institution;

(B) a statement of admissions policies;

(C) information describing the purpose, length, and objectives of the program(s) offered by the institution;

(D) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(E) cancellation and refund policies;

(F) a definition of the unit of credit as it applies at the institution;

(G) an explanation of satisfactory progress as it applies at the institution; an explanation of the grading or marking system;

(H) the institution's calendar including the beginning and ending dates for each instructional term, holidays, and registration dates;

(I) a listing of full-time faculty members showing highest earned degree and identifying the institution which awarded the degree;

(J) areas of faculty specialization;

(K) names and titles of administrators;

(L) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(M) a complete listing of all scholarships offered, if any;

(N) a statement describing the nature and extent of available student services; and

(O) any disclosures specified by the Board or defined in Board rules.

(13) Refund Policy. The institution shall adopt, publish, and adhere to a fair and equitable cancellation and refund policy.

(14) Credentials. Upon completion of an approved program of study, students shall be given appropriate credentials by the institution indicating that the program undertaken has been satisfactorily completed.

(A) Transcripts shall be issued upon request of students or former students.

(B) An institution may withhold a student transcript as allowed in the Texas Education Code, Section 132.062.

(15) Student Rights and Responsibilities. A handbook, catalog, or other publication listing the student's rights and responsibilities shall be published and supplied to the student upon enrollment in the institution. The institution shall establish a clear and fair policy regarding due process in disciplinary matters and shall inform each student of these policies in writing.

(16) Housing. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(17) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable rules and regulations of the Texas Workforce Commission.

(18) Open and Accurate Representation of Activities. Neither the institution or its agents shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, or misleading.

(19) Distance Learning.

(A) General Provisions

(i) No degree program may be offered via distance learning instruction without prior approval by the Board. In addition, an institution may not offer through distance learning instruction at any site the number and array of courses that would constitute a degree program without prior approval by the Board to offer a full program at that site.

(ii) The institution shall formulate clear and explicit goals for any distance learning which is included in an approved degree program. The institution shall demonstrate that distance learning included in an approved degree program is consistent with the stated purpose of the institution and the program of study. The institution shall furthermore demonstrate that it achieves these goals and that its distance learning courses and programs are effective and comply with all relevant Board rules and guidelines.

(B) Standards and Criteria for Distance Learning

(i) Distance learning instruction offered by any live or telecommunications delivery system shall be comparable to and meet all quality standards required of on-campus instruction.

(ii) A distance learning course which offers regular college credit shall do so in accordance with the standards contained in this chapter and in the Guidelines for Instructional Programs in Workforce Education.

(iii) Students enrolled in distance learning shall satisfy the same requirements for admission to the institution, to the program of which the course is a part, and to the class/section itself, as are required of on-campus students.

(iv) Faculty providing distance learning shall be selected and evaluated by the same standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus instruction. Institutions shall provide training and support to enhance the added skills required of faculty teaching classes via instructional telecommunications.

(v) The instructor of record for a distance learning course shall participate in the delivery of instruction and evaluation of student progress.

(vi) All distance learning instruction shall be administered under the same office or person administering the corresponding on-campus instruction. The supervision, monitoring, and evaluation processes for instructors shall be comparable to those for on-campus instruction.

(vii) Students enrolled in distance learning shall be provided with academic support services including academic advising, counseling, library and other learning resources, tutoring services, and financial aid. These services shall be comparable to those available for students receiving on-campus instruction.

(viii) The institution shall assure that facilities for distance learning (other than private homes as instructional telecommunications reception sites) are adequate for the purpose of delivering telecommunications instruction and are comparable in quality to on-campus facilities.

(ix) The institution shall inform the Board if a course which is part of a currently approved degree program will be offered via distance learning. As a courtesy, the institution should also notify the chairperson of the appropriate Higher Education Regional Council(s) of the course offering via distance learning. Newly developed courses which the institution desires to include in an approved degree program, or which are included in an application for a new degree program, and which are to be offered via distance learning are subject to the same Board review and approval process as on-campus courses.

§12.46. Curriculum Requirements.

(a) All applied associate degree programs shall be designed to meet specific occupational competencies and shall contain the following basic elements:

(1) a defined number of hours required for graduation, measured by both credit hours and contact hours;

(2) a defined core of general education courses; and

(3) a defined core of courses in the technical/vocational major.

(b) Applied associate degree curricula may contain related studies courses, appropriate directed electives, any remedial courses. Credit earned in remedial courses is not applicable toward the applied associate degree.

(c) All applied associate degree curricula shall be structured to reflect a logical progression of knowledge and skills, with course prerequisites established as appropriate. Prerequisite courses shall be clearly identified in the institution's catalog.

(d) If the applied associate degree is required as the minimum education level for licensure or certification by an external state or

national agency or board for entry into an occupation, the applied associate degree curriculum shall be designed to enable students to meet the minimum requirements for licensure or certification.

(e) Applied associate degree programs shall have a program advisory committee of at least five members which is responsible for advising the institution on program requirements, course content, equipment, employment trends, and other relevant issues which will help ensure program quality.

(1) Advisory committees shall be composed of members from the public and/or private sectors who broadly represent the occupational field and skills used in the occupations for which training is being provided. The majority of advisory committee members shall represent employers in the field for which the program offers training, or shall currently practice the occupation for which the program offers training, or shall be formally trained in the occupation for which the program offers training.

(2) Committee membership should represent the population in the institution's target market area with regard to race, color, national origin, gender and handicap.

(3) Full-time and part-time employees of the institution may serve as ex-officio members only and may not count toward the required minimum of five committee members.

(4) New program applications shall include minutes of all advisory committee meetings conducted for the planning of new programs and a roster containing names and addresses, occupations, and business affiliations of the advisory committee members.

§12.47. General Education Requirements.

(a) An applied associate degree program shall include a core curriculum containing a minimum of 15 semester credit hours or 20 quarter-credit hours in general education.

(b) Within the core, or in addition to it, there shall be courses designed to develop skills in oral and written communication and computation.

(c) Basic computer instruction shall be included in the curriculum.

(d) General education core courses shall not be narrowly focused on those skills, techniques, and procedures which are peculiar to a particular occupation or profession and shall be drawn from each of the following areas:

(1) Humanities or Fine Arts;

(2) Social or Behavioral Sciences; and

(3) Natural Sciences or Mathematics

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 1999.

TRD-9905240
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: September 6, 1999
Proposal publication date: May 28, 1999
For further information, please call: (512) 483-6162

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19 TAC §12.57

The Texas Higher Education Coordinating Board adopts new §12.57 concerning Proprietary Schools (Basic Standards) without changes to the proposed text as published in the May 28, 1999 issue of the *Texas Register* (24 TexReg 3969).

The proposed new rule would require a uniform method for the assessment of credit given for prior learning at proprietary institutions.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under Texas Education Code, Section 132.032, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Basic Standards).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 483-6162

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Subchapter C. Operational Provisions

19 TAC §12.75, §12.81

The Texas Higher Education Coordinating Board adopts amendments to §§12.75 and 12.81 concerning Proprietary Schools (Operational Provisions). Section 12.75 is adopted with changes to the proposed text as published in the May 28, 1999 issue of the *Texas Register* (24 TexReg 3970). Section 12.81 is being adopted without changes and will not be republished. The proposed amendments to the rule would give proprietary institutions flexibility in correcting program deficiencies and specify further grounds for withdrawal of authorization to grant degrees.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under Texas Education Code, Section 132.032, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Operational Provisions).

§12.75. Evaluation of Program Effectiveness.

(a) Every program in which an applied associate degree is offered shall be evaluated periodically according to procedures established by the Coordinating Board.

(b) The following evaluation elements shall be assessed in terms of both quantitative and qualitative factors: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, facilities and equipment, instructional practices, student services, public and private linkages, and qualifications of faculty and administrative personnel.

(c) The Coordinating Board staff shall use the results of the program evaluation to identify applied associate degree programs that should be continued or considered for closure. Programs considered for closure will be subject to a second evaluation conducted by Coordinating Board staff. The institution may provide additional information related to any program(s) being considered for closure.

(d) The Coordinating Board staff shall approve the program for continuation or shall place the program under review for closure status based on the results of the second evaluation. If a program is considered for closure, the staff shall identify specific program deficiencies which shall be corrected.

(e) Institutional representatives shall develop a plan to correct the deficiencies in any program placed under review for closure status. Time limits for correcting deficiencies will be recommended by the Coordinating Board staff and approved by the Assistant Commissioner for Community and Technical Colleges. The Coordinating Board staff shall re-evaluate the program at the end of the established time period. If in the judgement of the Coordinating Board staff, the identified deficiencies have not been adequately and/or appropriately corrected, program closure shall be initiated. No new students may be enrolled and following the completion of the program by all currently enrolled students the program shall be closed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483-6162

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19 TAC §12.84, §12.85

The Texas Higher Education Coordinating Board adopts new §§12.84 and 12.85 concerning Proprietary Schools (Operational Provisions) without changes to the proposed text as published in the May 28, 1999 issue of the *Texas Register* (24 TexReg 3970). The proposed new rules would establish requirements for handling complaints and establish requirements for notifying the Board if a proprietary institution becomes a defendant in a legal action.

There were no comments received regarding the proposed amendments.

The new rules are adopted under Texas Education Code, Section 132.032, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Operational Provisions).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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James McWhorter
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Subchapter D. Approval of Applied Associate Degree Programs

19 TAC §§12.91-12.93

The Texas Higher Education Coordinating Board adopts new §§12.91, 12.92 and 12.93 concerning Proprietary Schools (Approval of Applied Associate Degree Programs) without changes to the proposed text as published in the May 28, 1999 issue of the *Texas Register* (24 TexReg 3971). The proposed new rules would establish requirements for approval of new programs.

There were no comments received regarding the proposed amendments.

The new rules are adopted under Texas Education Code, Section 132.032, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Approval of Applied Associate Degree Programs).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 21. Student Services

Subchapter B. Determining Residence Status

19 TAC §§21.22, 21.23, 21.26, 21.28, 21.30, 21.31, 21.37, 21.41

The Texas Higher Education Coordinating Board adopts amendments to §§21.22, 21.23, 21.26, 21.28, 21.30, 21.31, 21.37, and 21.41 concerning Determining Residence Status) without changes to the proposed text as published in the June 4, 1999 issue of the *Texas Register* (24 TexReg 4137). The proposed amendments are being made to clarify the criteria used in making decisions about a student's residency status.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under Texas Education Code, Section 54.053 and Section 130.001(b) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: September 6, 1999
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For further information, please call: (512) 483-6162

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Subchapter II. Educational Aide Exemption Program

19 TAC §21.1083

The Texas Higher Education Coordinating Board adopts amendments to §21.1083 concerning Educational Aide Exemption Program (Definitions) without changes to the proposed text as published in the June 4, 1999 issue of the *Texas Register* (24 TexReg 4139). The proposed amendments will increase the adjusted gross income amounts for married independent students and the family income for dependent students from $35,000 to $50,000. The adjusted gross income for a single independent student would remain at $25,000. The changes are being made to improve the equity between the married and single income levels by making more married aides eligible for the exemption.

There were no comments received regarding the proposed amendments.

The amendments to the rules are adopted under Texas Education Code, Section 54.214(e), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Educational Aide Exemption Program (Definitions).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9905246
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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Proposal publication date: June 4, 1999
For further information, please call: (512) 483-6162

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Part II. Texas Education Agency

Chapter 109. Budgeting, Accounting, and Auditing

Subchapter C. Adoption by Reference

19 TAC §109.41

The Texas Education Agency (TEA) adopts an amendment to §109.41, concerning the "Financial Accountability System Resource Guide." The amendment is adopted without changes to the proposed text as published in the July 23, 1999, issue of the *Texas Register* (24 TexReg 5645) and will not be republished. Section 109.41 adopts by reference the "Financial Accountability System Resource Guide" as the TEA's official rule. The "Resource Guide" describes rules for financial accounting such as financial reporting; budgeting; purchasing; auditing; site-based decision making; data collection and reporting; and management. Public school districts use the "Resource Guide" to meet the accounting, auditing, budgeting, and reporting requirements as set forth in the Texas Education Code and other state statutes relating to public school finance. The "Resource Guide" is available at www.tea.state.tx.us/school.finance/ on the TEA website.

Under §109.41(b), the commissioner of education shall amend the "Financial Accountability System Resource Guide," adopting it by reference, as needed. The amendments to the "Resource Guide" include changes to financial accounting and reporting guidelines. The amendments are necessary to implement new 19 TAC §105.12, Basic Allotment, that explains authorized use of undesignated state aid under the Texas Education Code, Chapter 42, Subchapter B. Undesignated state aid under the Texas Education Code, Chapter 42, Subchapter B, may be used for any lawful purpose, including the acquisition, renovation, repairs and maintenance of facilities and necessary sites, and capital purchases. Proposed new 19 TAC §105.12 was published in the July 23, 1999, issue of the *Texas Register* (24 TexReg 5644). The TEA anticipates filing adopted new 19 TAC §105.12 in September 1999, pending approval by the State Board of Education at its September meeting.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Education Code, §§7.055, 44.001, 44.007, and 44.008, which authorize the commissioner of education to establish advisory guidelines relating to fiscal management of a school district and the State Board of Education to establish a standard school fiscal accounting system in conformity with generally accepted accounting principles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 23, 1999.

TRD-9905333
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: September 12, 1999
Proposal publication date: July 23, 1999
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 102. Fees.

22 TAC §102.1

The State Board of Dental Examiners adopts amendments to §102.1, concerning fees without changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4689) and will not be republished.

The adopted changes are to subsections (a)(2) and (b)(2), to raise by $1.00 the annual renewal fee for dentists and dental hygienists. The Texas Legislature requires the State Board of Dental Examiners to increase fees to offset any additional appropriations provided by the legislature. The additional cost for renewal is provided to meet this requirement.

No comments were received regarding adoption of the proposal.

The amendment is adopted under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543, §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 1999.

TRD-9905270
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: September 7, 1999
Proposal publication date: June 25, 1999
For further information, please call: (512) 463-6400

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Chapter 109. Conduct

Subchapter L. Anesthesia and Anesthetic Agents

22 TAC §109.171

The State Board of Dental Examiners adopts amendments to §109.171, without changes to the proposed text as published in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3004) and will not be republished. The amendments provide for an effective date of §§109.172-109.175 as provided by Texas Government Code, §2001.036 (Vernon Supp. 1999), unless specifically provided otherwise.

The rule as published in the *Texas Register* and as adopted hereby, provides that unless specifically provided otherwise, the provisions of §§109.172-109.175 that require equipment and/or certifications that were not required by the rules in effect in September, 1998, i.e., new requirements shall not be enforced until September 1, 2000. The other provisions of the rules adopted become effective as provided for in the Texas Government Code, i.e., twenty days after publication in the *Texas Register*. The rule was published for comment and a public hearing was conducted on June 4, 1999.

No comments either oral or written, were received regarding adoption of the amended rule.

The amendment is adopted under Texas Government Code §2001.021 (Vernon Supp. 1999) and Texas Revised Civil Statutes Annotated article 4543, §2 and article 4551d, (Vernon Supp. 1999) which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules as may be necessary to ensure compliance with laws relating to the practice of dentistry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 1999.

TRD-9905271
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
Effective date: September 7, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 463-6400

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22 TAC §109.172

The State Board of Dental Examiners adopts amendments to §109.172, without changes to the proposed text as published in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3004) and will not be republished.

The amendments expand the definition of terms to apply in Subchapter L, Anesthesia and Anesthetic Agents. The rule now includes definitions of a number of terms not previously defined in order to provide for clarity of meaning within the substantive rules, and to provide new definitions applicable to new provisions of §109.174 and §109.175. Further, some existing terms were amended in non-substantive form to provide for greater clarity in the definitions. In addition, the section defining Local Anesthesia was amended by dropping the phrase "topical application or" from the definition so that the term "local anesthesia" applies only to regional injections of drugs to provide elimination of sensations in parts of the body. A section defining "topical anesthesia" was added in order to provide for topically administered local anesthesia. This change was made to avoid conflict with provisions with the Dental Practice Act providing that registered dental hygienists can administer topical medicaments some of which may have a local anesthetic effect. Another section of the Dental Practice Act provides that dental auxiliaries, including dental hygienists, may not administer local anesthesia. The definitions in the rules were changed in order to eliminate the conflict between statute (dental hygienists may administer topical medicaments) and rule (local anesthesia includes topical medicaments).

The rule was published for comment, and a public hearing was held on June 4, 1999.

There were no written comments concerning this rule, and only one person addressed the rule at public hearing. Dr. James Chancellor, representing the Texas Society of Dental Anesthesiologists, asked questions about the meaning of the terms "facility inspection" and "satellite facility." Dr. Chancellor, after hearing the explanations offered by board members, had no further questions or comments about the rule.

The amendment is adopted under Texas Government Code §2001.021 et. seq., (Vernon Supp, 1999), Texas Revised Civil Statute Annotated article 4543, §2 and article 4551d which provide the State Board of Dental Examiners with the

authority to adopt and promulgate rules consistent with the Dental Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 1999.

TRD-9905272
Jeffry R. Hill
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463-6400

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22 TAC §109.173

The State Board of Dental Examiners (SBDE) adopts amendments to §109.173, with changes to the proposed text as published in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3006).

The first paragraph is amended to make the rule grammatically correct. Paragraph (2)(B) is amended to change the word "shall" to "should" in reference to the initial limited physical examination as the mandatory word "shall" is not consistent with the last phrase of the rule which states "as may be indicated for each patient." Paragraph(4)(D) is added to require that all practitioners adhere to generally accepted protocols and standards of care for management of complications and emergencies. Paragraph (5) is amended to provide for successful completion of a current course in basic CPR as opposed to a biannual requirement for completion. Finally, paragraph (6) addressing the standard of care is amended to "provide that practitioners should maintain written informed consents for any procedure in which there is a reasonable expectation of complications. The consent of a minor or an incompetent should be signed by either the patient or a legal guardian.

The rule was published for comment and a public hearing was conducted on June 4, 1999.

No written comments were received. Doctor James Orr, made comment at public hearing, and recommended that paragraph (6) be amended to include language concerning informed consent from minors and others adjudged to be incompetent. The State Board of Dental Examiners agrees that Dr. Orr's comments should be implemented in the rule as set forth, and it has changed the published rule in response to this comment.

The justification for other changes in paragraph (6) are set out herein.

The current rule requires an informed consent where required by law, but provides no guidance concerning the meaning. The SBDE proposes language that requires a consent when a reasonable probability of complications exists. Further, the SBDE approved for publication language to avoid apparent conflict with the provisions of Texas Revised Civil Statute Annotated article 4590i, §6.02 (Vernon Supp, 1999). That section of law provides when a healthcare claim is based upon failure to provide informed consent, the only basis for recovery is that the practitioner failed to inform the patient of the risks associated with the contemplated procedure so that a reasonable patient would have been in a position to make an informed decision concerning the treatment.

The SBDE takes the position that an informed consent provision that does not impose the same requirement as article 4590i, which involves procedures in malpractice suits, can tend to be confusing. A dental practitioner who is in compliance with the Board's rules regarding standard of care for informed consent, could at the same time, fail to meet the requirements of law that would be imposed in a malpractice suit. For dentists, unfortunately, the standards are not as clearly spelled out in the law as they are for physicians. Sections of the law subsequent to section 6.02 provide two laundry lists of medical services. One category lists procedures which must have been proceeded by an informed consent before the physician may perform the procedure, and the other category provides a list of procedures which do not require a written consent. No dental procedures are included on those lists. Therefore, dentists may not look to those lists to determine whether a written informed consent is needed for a given procedure. That is the reason the Board has chosen to use language in its rule that states that a dentist should obtain a written informed consent when there is a reasonable possibility or probability of complications. That determination can only be made by a trained practitioner and could never be made the patient. On the other hand since the dentist is subject to suit for a failure to obtain an informed consent on the basis of a reasonable patient, as opposed to a reasonable practitioner, the Board is of the opinion that additional language to address this issue is needed.

The amendment is adopted under Texas Government Code §2001.021 et. seq.; Texas Revised Civil Statute Annotated article 4543, §2 and article 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

§109.173. Minimum Standard of Care.

Each dentist licensed by the State Board of Dental Examiners and practicing in Texas shall conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances. Further, each dentist:

(1) Shall maintain a patient record:

(A) from which a diagnosis may be made;

(B) which includes a description of treatment rendered;

(C) includes the date on which treatment is performed; and

(D) which includes any information a reasonable and prudent dentist in the same or similar circumstances would include.

(2) Shall maintain and review an initial medical history and perform limited physical evaluation for all dental patients to wit:

(A) the initial medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list", for consistency, may be utilized in obtaining initial information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist in the same or similar circumstance would so do.

(B) the initial limited physical examination should include, but shall not necessarily be limited to, blood pressure and pulse/heart rate as may be indicated for each patient.

(3) Shall obtain an review an updated medical history and limited physical evaluation when a reasonable and prudent dentist under the same or similar circumstances would determine it is indicated.

(4) Shall, for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order.

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience in the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist in the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies.

(5) Shall successfully complete a current course in basic cardiopulmonary resuscitation offered by either the American Heart Association or the American Red Cross.

(6) Should maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient if the patient is a minor, or a legal guardian of the patient if the patient has been adjudicated incompetent to manage the patient's personal affairs. Such consent is required for all procedures where a reasonable possibility of complications from the procedure exists, and such consent should disclose risks or hazards that could influence a reasonable person in making a decision to give or withhold consent.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 1999.

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Chapter 109. Conduct

The State Board of Dental Examiners adopts amendments to §109.174 concerning Sedation/Anesthesia Permit and §109.175 concerning Permit Requirements and Clinical Provisions, with changes to the proposed text as published in the April 16, 1999, and April 30,1999, issues of the *Texas Register* (24 TexReg 3006), (24 TexReg 3009) and (24 TexReg 3370).

Section 109.174 as adopted herein requires permits for each of three kinds of sedation, and §109.175 requires specific training and/or education for each type of sedation permit, provides standards of care for administration of each kind of sedation and set outs clinical procedures. The two rules are addressed in one order since, even though the general subjects of the rules have not changed, positions of some subjects in the rules have changed. The language that was published for public comment in the April 16, 1999 and April 30, 1999, issues of the *Texas Register*, is language that evolved during two years of discussions with individuals and organizations having an interest in the profession. The Board originally published these rules for comment in the summer of 1997 and conducted a public hearing on September 15, 1997. Public comments, focused primarily on three areas, prompted the Board to withdraw the rules. Those areas were: (1) limitations on portability that excluded parenteral conscious sedation permit holders; (2) requirements for holders of parenteral conscious sedation permits to take the Advanced Cardiac Life Support Course to certify for renewal; and (3) additional monitoring and reporting requirements. The Board appointed an ad hoc committee made up of Board members to conduct open meetings to discuss view points of committee members concerning the rules, and to come to a consensus among the committee members concerning those issues. The language of the rules was published on September 4, 1998, and public comment was invited, and a public hearing was held on November 6, 1998. Again, the rules were withdrawn and republished with the primary change being a requirement that an EKG be used on ASA I and II patients consciously sedated parenterally. Further, the rules, as adopted hereby, are modeled on American Dental Association's Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists.

Changes in Rules as Published:

Section 109.174, includes new language providing that a dentist may provide services in another dentist's office or other locations such as hospitals, clinics, etc. After September 1, 2000, all dentists providing services on a portable basis must have a permit.

Another significant change is a requirement for a higher level of certification for renewal of the permit. Rules currently in effect provide that a dentist with a parenteral conscious sedation permit must complete a course in basic cardiopulmonary resuscitation every two years. The new rules provide that dentists with parenteral conscious sedation permits or parenteral deep sedation/general anesthesia permits, every three years must successfully complete one of the following: (1) an advanced emergency procedures course to be approved by the Board; (2) an advanced cardiac life support course (ACLS); (3) a pediatric advanced life support course (PALS), or; (4) an age appropriate equivalent course. To further this procedure, the State Board of Dental Examiners and the dental schools in Texas along with the Texas Dental Association have been working together to come up with an advanced emergency procedures course.

The third area of change set forth in the two rules involves the clinical aspects of the provision of anesthesia. The professional or educational requirements for parenteral deep sedation/general anesthesia are not changed significantly nor are the requirements for parenteral conscious sedation, but they have been moved from §109.175 to §109.174. On the other hand, the rules are far more specific with regard to clinical procedures to be followed than are the rules currently in effect. Section 109.175 now includes a laundry list of

equipment and procedures for each level of sedation, i.e., inhalation conscious sedation, parenteral conscious sedation, and parenteral deep sedation/general anesthesia. The rules now specifically spell out the professional requirements, the standard of care requirements, and the clinical requirements for each of those categories. Particularly in regard to the clinical requirements, there is greater detail in the rules adopted herein.

Sections 109.174 and 109.175 published in the April 16, 1999 and April 30, 1999, issues of the *Texas Register* are similar in most respects to the same rules that were published September 4, 1998, for which a public hearing was conducted. Some changes from the rules currently in effect were occasioned by comments made in the earlier public hearing, but in the present procedure comments did not address some changes included in the new rules.

The comments made at the June 4, 1999, public hearing will be addressed in the main body of this justification. Comments made in 1998, that led to changes to the existing rules are also addressed.

Separate comments were heard on each rule and will be addressed by rule number.

Scope of Rules:

Section 109.174. The first commenter was Phil Hunke, DDS. Dr. Hunke indicated that his concerns were the same as those expressed by commenters during the 1998, public hearing. Specifically, he mentioned the need to include in these rules provisions concerning enteral (oral and rectal) sedation. Comments suggesting that the SBDE include oral sedation in the rules were also made by Susie Seale, DDS, representing the Texas Association of Pediatric Dentistry, and Susan Seybold, DDS, representing the University of Texas Health Science Center, Houston.

Dr. Stephen K. Brandt, filed a written comment that the SBDE should include the oral route.

Commenters from the 1998 Public Hearing:

Carolyn Wilson, D.D.S., representing Baylor College of Dentistry, Texas A&M University System, indicated that the rules in general should include provisions concerning enteral administration of anesthesia. Dr. Wilson expressed the opinion that the level of sedation, that is conscious or deep, is far more important than the route of administration of sedation, that is, through the alimentary canal (enterally) or otherwise (parenterally). She urged the Board to include the enteral route of administration of anesthesia within the rules, though she made no proposals concerning the language that would do so, nor did she make any proposals or provide any information concerning how the Board should address enteral administration of anesthesia. For example, would licensees be required to have permits to administer oral anesthesia? What additional training would be required in order to obtain such a permit?

Lynn Thompson, D.D.S., representing himself, agreed with Dr. Wilson concerning the route of administration of sedation and suggested that the rules should cover sedation administered enterally. Also, several commenters on §109.175 raised the issue of whether the rules should address the route of administration. Persons making comments under §109.175, were Brian Collins, D.D.S., who drew a distinction between the paths used though he made no recommendation to have rules that included the enteral route. Dr. Carolyn Wilson also made a comment concerning §109.175, and made the same observation that the enteral route should be included in the rules.

Others who commented concerning the route of administration when speaking about §109.175, were Ronald Johnson, D.D.S., Dean of The University of Texas Health Science Center at Houston, Susan Seybold, D.D.S., Program Director for Pediatric Dentistry, The University of Texas Health Science Center Houston, Advanced Education, Susie Seale, D.D.S., Chair, Department of Pediatric Dentistry Baylor, also speaking on behalf of the Texas Academy of Pediatric Dentistry.

Leonard Tibbetts, D.D.S., also speaking on §109.175, indicated that the Board should continue with the rules as proposed, and take up the issue of oral sedation at a future time. Dr. Tibbetts indicated that addressing oral sedation now would result in loss of time already spent in this rule-making effort. He said that if the Board is sympathetic to inclusion of oral sedation rules in the current rules, it would be necessary to include significant amounts of information and procedures that are not in the current rules. Rules addressing oral anesthesia would, therefore, require republication, which would require dropping the proposed rules and starting all over as the Administrative Procedure Act requires that rules must be adopted within six months of the date of publication for comment. That limitation does not allow republication in this case as the six-month period will expire prior to the next scheduled Board meeting. Dr. Tibbetts did urge the Board to consider addressing oral sedation techniques in the future.

The Board is of the opinion that Dr. Tibbetts, speaking in 1998, has outlined the better approach. The current rules do not address the administration of oral anesthesia rather they are limited to nitrous oxide/oxygen inhalation conscious sedation, parenteral conscious and parenteral deep sedation/general anesthesia techniques. The amendments that have been discussed for over two years are limited to parenterally administered sedation and the Board cannot amend these rules to include enteral sedation without republishing. As pointed out in response to Dr. Tibbetts comments, such republication would necessitate withdrawing all of the anesthesia rules proposed and beginning over because of time limits imposed by the Administrative Procedure Act. The Board has heard the comments made by various speakers and recognizes a need to consider a rule-making procedure addressing oral sedation. Given the number and the nature of the comments made, the Board has asked its Enforcement Committee to address those issues, but it will not include such changes in the rules under consideration here.

Portability:

Dr. Hunke also urged the Board to eliminate the provisions of the rules requiring those dentists who will provide anesthesia services in locations other than the permittee's office or satellite offices to have a separate permit to provide portable services.

The rules currently in force and these rules hereby adopted allow dentists in Texas to provide anesthesia services in locations other than the dentists' own offices. The proposed rules, however, require all dentists who desire to provide sedation on a portable basis to obtain a permit to do so. Those dentists having or obtaining permits to administer deep/general sedation will be issued portability permits upon making an application for such a permit. Licensees who have an intravenous parenteral conscious sedation permit will be granted a portability permit if their training to obtain the parenteral conscious seda-

tion permit was obtained in any context other than a continuing education program. Graduates of a continuing education program who obtained their parenteral conscious sedation permit on that basis, who can demonstrate that they have provided parenteral conscious sedation intravenously in at least thirty cases that are documented and if the continuing education program meets criteria set forth in the rule, may also obtain a portability permit. Further, individuals who have a parenteral conscious sedation permit on the effective date of these rules may apply for a portability permit and it will be granted if the applicant can demonstrate the administration of intravenous parenteral conscious sedation in at least thirty cases that are documented.

During the years of discussion prior to publication of the rules under consideration, the question arose on a number of occasions why the Board proposes to issue portability permits, especially since the Board has allowed administration of anesthesia services on a portable basis since the adoption the rules currently in effect. In earlier proceedings on these rules, it was pointed out that many other states allow portability and that the American Dental Association guidelines contemplate portability. Of interest here is the fact that most states that allow dentists with anesthesia permits to provide services on a portable basis require, during the permitting process, the identification of every location where the permittee will provide services. For example, in the 1998, hearing a reference was made to adopted rules in Ohio, with an observation that the state of Ohio recognized that anesthesia services could safely be administered in any location. The implication of this is that portability should not be an issue. The Board, however, notes that the State of Ohio requires that every location where the permittee will provide services be identified in the application. Some states, while allowing portability impose far greater restrictions than those imposed by the State of Texas. The State Board of Dental Examiners recognizes that the situation in Texas is unique in that there are large geographical areas where dentists with permits to administer anesthesia are rare or non-existent. If a general dentist in such an area cannot bring in a dentist to administer anesthesia in the general dentist's office, access to care may be limited or even unavailable. The State Board of Dental Examiners is of the opinion that such services are appropriate and it encourages such services without the requirement that the locations where an individual will provide services be identified prior to the provision of service. This is a significant advantage to the public in Texas and is an advantage to practitioners who do not have permits but who want to provide anesthesia services for their patients in their offices. The Board has never taken the position that this particular aspect of Texas practice should be compromised in any way. On the other hand, the administration of anesthetic agents to sedate patients, even to a conscious level, is risky and the professional so doing must be in a state to respond adequately to medical emergencies that may arise. As Dr. Bennett, a commenter speaking in 1998, noted when a patient intended to be consciously sedated becomes deeply sedated or generally anesthetized, the practitioner is presented with a medical emergency. Even though such an event is rare, the Board has received complaints from patients concerning anesthesia services provided by permittees. A dentist performing anesthesia in unfamiliar surroundings, when confronted with a medical emergency, should be in a position to respond appropriately without being compromised by an unfamiliar location. Practitioners who have received training that is minimal, but adequate for purposes of issuing a conscious sedation permit, and who have very little experience in administering anesthesia, may find the combination of a medical emergency in strange surroundings and, in some cases, with support staff with whom they are unfamiliar, can be overwhelmed by the emergency and not respond appropriately. This is particularly important when the dentist who is permitted for conscious sedation is faced with a patient who has been inadvertently sedated to deep sedation or general sedation. But, with experience, or with more intensive training, the practitioner is more likely to be in a position to adequately respond to the emergency. Further, the facility in which anesthesia services are provided is an important part of the process. The Board in its rules provides that a practitioner applying for a permit can be required to demonstrate to a member of the Anesthesia Consultants Review Committee that the applicant is capable of providing the services for which he seeks the permit, and that the facilities in which he proposes to provide such services are adequately equipped and staffed. In other words, facilities are an important part of the process and even though the Board is of the opinion that practitioners should be allowed to provide services in facilities that have not been reviewed by the Board and whose locations that have not been divulged to the Board, provision of services in such locations should be provided only by those with higher levels of training and experience or only by individuals who have identified themselves to the Board as being providers of services on a portable basis. Since none of the commenters concerning portability or permitting for portability made any suggestions for changes, the Board is of the opinion that the rule as proposed is appropriate insofar as the issue of portability is concerned.

Certification

The next commenter was Paul Kennedy, DDS, representing the American Academy of Pediatric Dentistry. Dr. Kennedy presented a course syllabus for Conscious Sedation in Pediatric Dental Practice and suggested that the program is appropriate for all dentists. Dr. Kennedy recognized that the course can be used by pediatric dentists as an age appropriate course. His urging the Board to consider naming the course in the rules appears to be a request that a new category of acceptable emergency procedures courses be adopted.

The rules published for comment provide that individuals having parenteral conscious sedation permits and those having parenteral deep sedation/general anesthesia permits must complete every three years either an advanced emergency procedures course or an Advanced Cardiac Life Support course or a Pediatric Advanced Life Support course or an age appropriate equivalent course. The current rules provide that parenteral conscious sedation permit holders must have current certification in a basic cardiac life support course while those with deep/general sedation permits are required to have current certification in Advanced Cardiac Life Support. The intent of the changes is to provide alternatives for current certification for both levels of permittees while at the same time increasing the intensity of the current training for parenteral conscious sedation permit holders. The permit holder may choose to avail him or herself of the Advanced Cardiac Life Support rather than a "to be developed" emergency procedures course or Pediatric Advanced Life Support or age appropriate course. Since the course proposed by Dr. Paul Kennedy is already acceptable as an age appropriate course, the Board is not persuaded that there is a need for an additional category of courses. Accordingly, the Board will maintain §109.174(2)(B)(iii) and (3)(B)(iii) as proposed insofar as certification courses are concerned.

The next commenter was James Chancellor, DDS, representing himself. Dr. Chancellor referred to paragraph (a)(4) of the rule and expressed concern that this sentence was perhaps too restrictive. "Applications from licensees who are not in good standing will not be approved."

The Board agreed with Dr. Chancellor and suggested that the term "will" be changed to "may." Dr. Chancellor agreed that the change would address his concerns. Consequently the rule adopted hereby contains the term "may" as opposed to "will."

Monitoring:

Section 109.175. Phil Hunke, DDS representing himself and the American Society of Dentistry for Children (ASDC) addressed §109.175 language and read from a 1998 letter from the ASDC that suggested that the Board should delay adoption of these rules until a more comprehensive proposal on training, monitoring, and safety for all routes of administration could be made. Dr. Hunke also said that the proposed rules would unnecessarily complicate administration of anesthesia by pediatric dentists. He recommended to the board the guidelines of the American Academy of Pediatric Dentists. He maintained that differences between parenteral conscious sedation administered intravenously and that administered by other parenteral routes should be considered. He said that since conscious sedation administered through non-intravenous routes is low level, the same level of training and monitoring should not be required for both types.

The Board discussed this issue with Dr. Hunke and asked for input from Dr. Seale and Dr. Seybold. The Board is of the opinion that the rules should allow pediatric dentists to administer non-intravenous sedation without being required to use some of the monitoring techniques the published rule includes.

The Board approves this language for §109.175 (b)(3)(F). Accordingly §109.175 (b)(3)(F) is amended to read as follows:

(F) Special situations include multiple/combination techniques and single dosage techniques (IN, IM and SC) and types of special patients. In selected circumstances, parenteral conscious sedation may be utilized without establishing an indwelling intravenous line or continuous EKG monitoring with electrocardioscopy or pulse oximetry. These circumstances include sedation for brief procedures; young children managed entirely by non-intravenous techniques; or the establishment of intravenous access, EKG monitoring, or pulse oximetry after sedation has been induced due to poor patient cooperation. Vital sign monitoring and IV access during special situations should in as far as possible adhere to generally accepted standards of care and/or the American Academy of Pediatric Dentistry Sedation Guidelines published in 1999 for Level 1 and Level 2 conscious sedation, as those levels are defined in the guidelines. When these situations occur, the dentist responsible for administering parenteral conscious sedation shall document the reasons preventing the recommended preoperative or intraoperative management.

The next commenter was Leonard Tibbetts, DDS. Dr. Tibbetts said that rules of the Board should not require use of EKG equipment for patients classified as ASA I or ASA II (American Society of Anesthesiologists) who are consciously sedated. Dr. William Purifoy also made the same point. Both doctors indicated that there was no scientific data to establish that such a requirement is clinically reasonable.

The major difference between the rules published in the April 16, and April 30, 1999, issues of the *Texas Register*, which are under consideration herein, and those that were published in September, 1998, is that use of an EKG is required for administration of parenteral conscious sedation to patients who are classified as ASA I, II, III, or IV. The earlier rules required an EKG only for ASA III and IV patients. Further, the earlier rules did not mention defibrillators for conscious sedation while the rules under consideration require that a defibrillator be available when ASA III and IV patients are sedated and provides that a defibrillator should be present when ASA I and II patients are sedated.

In response to the doctor's allegations that there is no scientific evidence to establish that the requirements are clinically reasonable, the Board notes that likewise there is no scientific evidence that establishes that the requirements are clinically unreasonable.

Further, the Board notes that not too many years past anesthetists administered sedation without benefit of electrical or electronic monitoring. Yet, today the standard of care in hospitals, for physicians, and for CRNA's requires use of an EKG for administration of sedation including parenteral conscious sedation. The point is that the standard of care changes as improvements in technology, and techniques provide avenues for better health care. For example, better monitoring of patients and early intervention in emergencies, outside of a hospital environment, is becoming common. Commenters in the 1998, proceeding argued that the level of conscious sedation, especially in non intravenous situations, poses very little risk to patients. The amendment of §109.175 (b)(3)(F) set out herein recognizes this circumstance and allows a dentist to choose not to use an EKG, so long as the basis for the decision is documented.

For other non special situations the inclusion of EKG monitoring can only increase the margin of safety afforded to dental patients being sedated in dental offices. In a time when the elderly make up a large and growing percentage of the population, and when more patients are seeking dental care, a dentist administering sedative agents in an office setting should be fully prepared to deal with complications. Use of EKG for all consciously sedated patients, unless a special situation exception is established, provides a margin of safety that patients have a right to expect.

The next commenter was William Purifoy, DDS. In addition to comments on EKG's addressed above, Dr. Purifoy suggested that §109.175(b)(3)(D)(iii) should be amended to provide for blood pressure and pulse to be taken and recorded every 15 minutes rather than 10 minutes. Dr. Purifoy indicated that in his practice some elderly patients would complain about his equipment that automatically checks blood pressure at a preset frequency during period of sedation. They ask "When is the machine going to stop doing that?" Admittedly, if Dr. Purifoy is testing every 15 minutes (current rules do not establish a minimum), increased frequency of testing may generate more inquiries, but the more frequent the tests the greater the margin of safety for the patient. If something has gone wrong with the patient, the sooner the doctor is made aware the better the chances for successfully addressing the complication. From Dr. Purifoy's perspective the difference between 10 and 15 minute intervals is of little moment, all he needs to do is make what he referred to as an easy adjustment on his equipment. From the patient's perspective, during any given procedure, the blood pressure cuff will inflate more often. But the patient will be

afforded a greater margin of safety. If shorter intervals for testing blood pressure and pulse imposes no unreasonable burden on the doctor or the patient, and there is an enhanced level of safety, the Board must support the shorter interval. The section of the rule is not changed.

Dr. Purifoy also suggested that §109.174(b)(3)(F) be changed in the fifth line of the paragraph to change the phrase "young children" to "patient." That particular clause was included in the special situations exceptions to address non intravenous sedation of young children; i.e., the phrase was not, and is not intended for other special situations. Other situations described in the section do apply to all patients. Further, the changes to this section discussed above provide additional flexibility for all dentists administering non-intravenous sedation that results in either Level 1 or Level 2 sedation as defined in the American Academy of Pediatric Dentistry Sedation Guidelines. The Board does not make the requested change.

The next commentor was Gerry Shehan, CRNA, representing the Texas Association of Nurse Anesthetists, Inc. Mr. Shehan pointed out that rules of the Board of Nurse Examiners (BNE) allow CRNA's to engage in independent practice. In his view, the Boards rules are in conflict (the provisions about which he spoke have been in effect since 1989, and no substantive changes to those provisions are proposed) with the BNE rules. The BNE rules impose responsibilities and requirements on CRNA's.

The SBDE rules do not address CRNA's directly; rather they address dentists and require that a dentist who delegates to a CRNA the task of providing anesthesia services must have an anesthesia permit for the same level of sedation the CRNA will provide.

Written comments were filed by a number of persons concerning the provisions affecting CRNA's.

Carla J. Cox, attorney at law, on behalf of the Texas Association of Nurse Anesthetists alleged that the Board's rules may not govern CRNA's or restrict their scope of practice. The Board agrees and again points out that its anesthesia rules only address dentists in dental offices.

James Williams, General Counsel, Director Governmental Affairs for the Texas Nurses Association commented and pointed out the definition of nursing set forth in Texas Revised Civil Statute Annotated, article 4518, §5 (Vernon Supp., 1999) includes administration of medications or treatments as ordered by dentist."

This is a definition for all registered nurses, not just Advanced Practice Nurses, and it clearly authorizes a nurse to proceed on orders from physicians and dentists. From the SBDE's perspective what this means is a dentist may delegate functions to a nurse including a CRNA, and the nurse may perform the tasks, but there are limits on the tasks that a dentist may delegate to anyone, even though the limits set forth in these rules may have a spillover effect, they do not impose any requirement on nurses.

Dwight C. Williams, CRNA, on behalf of the Texas Association of Nurse Anesthetists, Inc., presented several articles that argued that physicians are not liable for negligence of CRNA's.

Mark Adams, CRNA, RRT, commented that Board rules impose an unwarranted restriction on the practice of CRNA's.

Gerry Shehan, CRNA, who spoke at the public meeting, also wrote and discussed some of the points covered in his oral presentation.

A written comment filed by Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners (BNE), pointed out that when a CRNA administers anesthetic agents, he or she is engaged in the practice of nursing. Ms. Thomas suggested changes which would still require any dentist using the services of a CRNA to also be permitted for the level of sedation the CRNA is to administer. She proposed that language be amended to allow a dentist to delegate personal supervision to a CRNA, as opposed to direct supervision. The Nursing Practice Act, Texas Revised Civil Statute Annotated, article 4514, §1 (Vernon Supp., 1999) provides that the BNE may by rule determine what constitutes nursing. Further, at §5, the BNE is permitted to recommend to the Board of Medical Examiners rules concerning delegation by physicians of authority to CRNA's and others. The Medical Practice Act at Texas Revised Civil Statute Annotated, article 4495b, §3.06(5) (Vernon Supp., 1999) provides for delegation of such acts to a CRNA by physicians. The BNE's rules allow delegation to CRNA's only by physicians.

Dentists who are not trained in parenteral conscious sedation, parenteral deep sedation/general anesthesia techniques to a sufficient degree to be allowed to administer parenteral conscious sedation, parenteral deep sedation/general anesthesia to patients, must obtain special training to be permitted to do so. Such unpermitted dentists should not be compared to physicians who have such training by virtue of graduation from medical school and having tested for and obtained a medical license.

The provisions of the rules complained of here are not new; there are no substantive changes to provisions that have been in place for more than ten years. Also, the guidelines of the American Dental Association recommend that delegation of sedation tasks to CRNA's be allowed only when the operating dentist has completed training for the level of sedation provided.

The Board by implementing and enforcing these rules does not in any way interfere with the authority of the Texas Board of Nurse Examiners to regulate CRNA's.

The Board makes no changes to the rules in response to the comments made on this issue. But in §109.175(a)(2)(D), the board added language stating that the SBDE by the rules does not address the scope of practice for persons licensed by any other agency.

The next commenter was James Chancellor, DDS. He proposed that the word "should" in §109.175(c)(3)(C)(iii) should be "must." The Board agreed with his comment and the word "must" is substituted.

Some comments made at the November 6, 1998, public hearing resulted in changes to the proposed rules published on April 16, 1999. Those comments and the Board's responses are included. The subject matter of all other comments made at the earlier hearing is covered in the Board's response to comments in the most recent procedures though the language used may be different.

Lynn Thompson, D.D.S., indicated that the requirement for eighty hours of didactic courses described in §109.174(f)(iv)(I) be reduced sixty hours. The reason for this suggestion was that there is no continuing education course available that contains eighty hours of didactic courses. He proposed that the language

be changed to require sixty hours. Doctor Epstein, Dr. Yagiela and Dr. Bennett also made this recommendation.

The Board is of the opinion that the suggestion made by the commenters is appropriate and that the hours should be reduced to sixty didactic hours and the Board recommends that §109.174(f)(2)(B)(iv)(I) read "sixty hours of didactic courses".

Subchapter L. Anesthesia and Anesthetic Agents

22 TAC §109.174

The amendment is adopted under Texas Government Code §2001.021 et seq.; Texas Revised Civil Statute Annotated, article 4543, §2, and article 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

§109.174. Sedation/Anesthesia Permit.

(a) The State Board of Dental Examiners shall appoint advisory consultants for advice and recommendations to the Board on permit requirements, applicant and facility approval.

(b) A dentist licensed by the State Board of Dental Examiners and practicing in Texas, who desires to utilize nitrous oxide/oxygen inhalation conscious sedation, parenteral conscious sedation, and/or parenteral deep sedation and general anesthesia, must obtain a permit from the State Board of Dental Examiners for the requested procedure.

(1) A permit may be obtained by completing an application form approved by the State Board of Dental Examiners, a copy of which may be obtained from the SBDE.

(2) The application form must be filled out completely and appropriate fees paid.

(3) Prior to issuance of a sedation/anesthesia permit the Board may require that the applicant undergo a facility inspection or further review of anesthesia credentials. The SBDE may direct an Anesthesia Consultant, who has been appointed by the Board, to assist in this inspection or review. The applicant will be notified in writing if an inspection is required and provided with the name of an Anesthesia Consultant who will coordinate the inspection. The applicant must make arrangements for completion of the inspection within 180 days of the date the notice is mailed. An extension of no more than 90 days may be granted if the designated Anesthesia Consultant requests one.

(4) An applicant for a sedation/anesthesia permit must be licensed and in good standing with the State Board of Dental Examiners. For purposes of §§109.171-109.175, of this title (relating to Anesthesia and Anesthetic Agents) "good standing" means that a licensee is not suspended, whether or not the suspension is probated. Applications from licensees who are not in good standing may not be approved.

(c) Any dentist approved by the State Board of Dental Examiners under previous rules prior to the effective date of this section for the utilization of nitrous oxide/oxygen inhalation conscious sedation, parenteral conscious sedation, or parenteral deep sedation/general anesthesia, except as described in subsection (d) of this section, shall remain permitted provided that the appropriate fees have been paid and that the dentist has a current license.

(d) Once a permit is issued, the State Board of Dental Examiners upon payment of required fees shall automatically renew the permit annually unless after notice and opportunity for hearing the Board finds the permit holder has, or is likely to provide anesthesia services in a manner that does not meet the minimum standard of care. At such hearing the Board shall consider factors including patient complaints, morbidity, mortality, and anesthesia consultant recommendations.

(e) Annual dental license renewal certificates shall include the annual permit renewal, except as provided for in subsection (d) of this section and shall be assessed an annual renewal fee of $5.00 payable with the license renewal. New permit fees are $28.75 payable with the application for permit.

(f) Permit Restrictions:

(1) A sedation/anesthesia permit is valid for the dentist's facility, if any, as well as any satellite facility.

(2) Portability of a sedation/anesthesia permit will be granted to a dentist who, after September 1, 2000, applies for portability if the dentist is granted:

(A) a deep sedation/general anesthesia permit; or

(B) an intravenous parenteral conscious sedation permit if training for the permit was obtained on the basis of completion of

(i) a specialty program approved by the Commission on Dental Accreditation of the American Dental Association, or

(ii) a general practice residency, approved by the Commission on Dental Accreditation of the American Dental Association, or

(iii) an advanced education in general dentistry program, approved by the Commission on Dental Accreditation of the American Dental Association, or

(iv) a Continuing Education (CE) program specifically approved by the SBDE. The board may approve a graduate of a CE program under this subsection only if the applicant can demonstrate administration of intravenous parenteral conscious sedation in at least 30 cases that are documented showing provision of anesthesia services in keeping with the standard of care as determined by one or more of the SBDE's anesthesia consultants; and the applicant establishes that the program consisted of

(I) sixty hours of didactic courses;

(II) administration of intravenous parenteral conscious sedation in at least 20 cases where the applicant was the anesthesia provider.

(3) When anesthesia services are provided by a dentist at a location other than a facility or a satellite facility, the dentist shall strictly adhere to all rules of the State Board of Dental Examiners which may apply. The dentist shall ascertain that the location is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia services that meet the standard of care.

(4) A dentist holding a permit to administer parenteral conscious sedation on the effective date of this rule who is qualified by training or experience to administer intravenous parenteral conscious sedation anesthesia on a portable basis, and who desires to do so must file with the State Board of Dental Examiners proof of completion of:

(A) a specialty program approved by the Commission on Dental Accreditation of the American Dental Association, or

(B) a general practice residency approved by the Commission on Dental Accreditation of the American Dental Association, or

(C) an advanced education in a general dentistry program approved by the Commission on Dental Accreditation of the American Dental Association, or

(D) a Continuing Education program and administration of intravenous parenteral conscious sedation in at least 30 cases that are documented showing provision of anesthesia services in keeping with the standard of care as determined by one or more of the SBDE's anesthesia consultants.

(E) The records of all dentists permitted to administer parenteral conscious sedation will be annotated showing whether portability status is granted.

(F) Any applicant whose request for portability is not granted on the basis of the application will be provided an opportunity for hearing pursuant to Texas Government Code, §2001 et.seq.

(5) A dentist holding a permit to administer parenteral deep sedation/general anesthesia on the effective date of this rule who desires to provide anesthesia on a portable basis must file with the State Board of Dental Examiners a request for a portability designation.

(A) The records of all dentists permitted to administer parenteral deep sedation/general anesthesia will be annotated showing whether portability status is granted.

(B) Any applicant whose request for portability status is not granted on the basis of the application will be provided an opportunity for hearing pursuant to Texas Government Code, §2001 et.seq.

(6) The Board may elect to issue a temporary sedation/anesthesia permit which will expire on a date certain. A full sedation/anesthesia permit may be issued after the dentist has complied with requests of the Board which may include, but shall not be limited to, review of the dentist's anesthetic technique, facility inspection and/or review of patient records to ascertain that the minimum standard of care is being met. If a full permit is not issued, the temporary permit will expire on the stated date, and no further action by the State Board of Dental Examiners will be required, and no hearing will be conducted.

(g) Educational/Professional requirements for sedation/anesthesia permits:

(1) Nitrous Oxide/Oxygen Inhalation Conscious Sedation

(A) To administer nitrous oxide/oxygen inhalation conscious sedation, the dentist must satisfy one of the following criteria:

(i) must have completed training consistent with that described in Part I or Part III of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry; or

(ii) must have completed an ADA accredited post-doctoral training program which affords comprehensive and appropriate training necessary to administer and manage nitrous oxide/oxygen inhalation conscious sedation.

(B) The following shall apply to the administration of nitrous oxide/oxygen inhalation conscious sedation in the dental office:

(i) provision of nitrous oxide/oxygen inhalation conscious sedation by another duly qualified dentist or physician anesthesiologist requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS);

(ii) when a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, in the dental office, provision of nitrous oxide/oxygen inhalation conscious sedation by a CRNA shall require the operating dentist to have completed training in nitrous oxide/oxygen inhalation conscious sedation, and to be permitted for its utilization.

(2) Parenteral Conscious Sedation

(A) To administer parenteral conscious sedation, the dentist must satisfy one of the following criteria:

(i) completion of a comprehensive training program in parenteral conscious sedation that satisfies the requirement described in Part III of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry at the time training was commenced; or

(ii) completion of an ADA accredited post-doctoral training program which affords comprehensive and appropriate training necessary to administer and manage parenteral conscious sedation.

(B) The following shall apply to the administration of parenteral conscious sedation in the dental office:

(i) provision of parenteral conscious sedation by another duly qualified dentist or physician anesthesiologist requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS);

(ii) when a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, in the dental office, provision of parenteral conscious sedation by a CRNA shall require the operating dentist to have completed training in parenteral conscious sedation, and to be permitted for its utilization;

(iii) a dentist administering parenteral conscious sedation must document current, successful completion every three years of an advanced emergency procedures course approved by the State Board of Dental Examiners or an Advanced Cardiac Life Support (ACLS) course, or a Pediatric Advanced Life Support (PALS) or age appropriate equivalent course.

(3) Parenteral Deep Sedation/General Anesthesia

(A) To administer parenteral deep sedation/general anesthesia, the dentist must satisfy one of the following criteria:

(i) completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in Part II of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry at the time training was commenced; or,

(ii) completion of an ADA accredited post-doctoral training program which affords comprehensive and appropriate training necessary to administer and manage parenteral deep sedation/general anesthesia.

(B) The following shall apply to the administration of parenteral deep sedation/general anesthesia in the dental office:

(i) provision of parenteral deep sedation/general anesthesia by another duly qualified dentist or physician anesthesiologist requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS);

(ii) when a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist,

in the dental office, provision of parenteral deep sedation/general anesthesia by a CRNA shall require the operating dentist to have completed training in parenteral deep sedation/general anesthesia, and to be permitted for its utilization;

(iii) a dentist administering parenteral deep sedation/general anesthesia must document current, successful completion every three years of an advanced emergency procedures course approved by the State Board of Dental Examiners or an Advanced Cardiac Life Support (ACLS) course, or a Pediatric Advanced Life Support (PALS) or age appropriate equivalent course.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 1999.

TRD-9905274
Jeffy R. Hill
Executive Director
State Board of Dental Examiners
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Proposal publication date: April 16, 1999
For further information, please call: (512) 463-6400

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22 TAC §109.175

The amendment is adopted under Texas Government Code §2001.021 et seq.; Texas Revised Civil Statute Annotated, article 4543, §2, and article 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

§109.175. Permit Requirements and Clinical Provisions.

(a) Nitrous Oxide/oxygen inhalation conscious sedation. To induce and maintain this type of conscious sedation on patients having dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) Professional requirements.

(A) Each dentist wishing to utilize this technique must be permitted by the State Board of Dental Examiners (SBDE) to deliver nitrous oxide/oxygen conscious sedation after having met the Education Requirements as detailed in §109.174 (g)(1) of this title (relating to Sedation/Anesthesia Permit).

(B) Nitrous oxide/oxygen inhalation conscious sedation shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas.

(2) Standard of care requirements. Each dentist must maintain the minimum standard of care as detailed in §109.173 of this title (relating to Minimum Standard of Care), and shall in addition:

(A) adhere to the clinical requirements as detailed in paragraph (3) of this subsection;

(B) maintain under continuous direct supervision auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of nitrous oxide/oxygen inhalation conscious sedation.

(C) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross; and

(D) not allow a nitrous oxide/oxygen inhalation conscious sedation procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the State Board of Dental Examiners for the procedure being performed. This provision and similar provisions in subsequent sections of this rule addresses dentists and is not intended to address the scope of practice of persons licensed by any other agency.

(3) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of nitrous oxide/oxygen inhalation conscious sedation:

(A) Patient Evaluation. Patients subjected to nitrous oxide/oxygen inhalation conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV) consultation with their primary care physician or consulting medical specialist regarding potential procedure risk should be considered.

(B) Pre-Procedure preparation, informed consent:

(i) the patient and/or guardian must be advised of the procedure associated with the delivery of the nitrous oxide/oxygen inhalation conscious sedation.

(ii) the inhalation equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;

(iii) determination of adequate oxygen supply must be completed prior to use with each patient;

(iv) baseline vital signs should be obtained at the discretion of the operator depending on the medical status of the patient and the nature of the procedure to be performed.

(C) Personnel and Equipment Requirements:

(i) in addition to the dentist, at least one member of the assistant staff should be present during the administration of nitrous oxide/oxygen inhalation conscious sedation in non-emergency situations;

(ii) the inhalation equipment must have a fail-safe system that is appropriately checked and calibrated;

(iii) if nitrous oxide and oxygen delivery equipment capable of delivering less than 25% oxygen is used, an in-line oxygen analyzer must be utilized;

(iv) the equipment must have an appropriate nitrous oxide/oxygen scavenging system.

(v) regardless of the sedation/anesthesia technique, the ability of the provider and/or the facility to deliver positive pressure oxygen must be maintained.

(D) Monitoring and Documentation:

(i) maintain personal supervision of the patient during induction of the nitrous oxide/oxygen inhalation conscious sedation procedure and during maintenance of nitrous oxide/oxygen inhalation conscious sedation for such a period of time necessary to establish pharmacologic and physiologic vital sign stability. The dentist may delegate under direct supervision, as defined in §109.172

of this title (relating to Definitions), the monitoring of the nitrous oxide/oxygen inhalation conscious sedation procedure to a dental auxiliary who has been certified to monitor the administration of nitrous oxide/oxygen inhalation conscious sedation by the State Board of Dental Examiners. Certification is obtained by successful completion of a written examination offered by the State Board of Dental Examiners on said subject.

(ii) individuals present during administration should be documented;

(iii) maximum concentration administered must be documented.

(E) Recovery and Discharge:

(i) recovery from nitrous oxide/oxygen inhalation conscious sedation, when used alone, should be relatively quick, requiring only that the patient remain in an operatory chair as needed;

(ii) patients who have unusual reactions to nitrous oxide/oxygen inhalation conscious sedation should be assisted and monitored either in an operatory chair or recovery room until stable for discharge;

(iii) the dentist must determine that the patient is appropriately responsive prior to discharge.

(F) Emergency Management. The dentist, personnel and facility must be prepared to treat emergencies that may arise from the administration of nitrous oxide/oxygen inhalation conscious sedation.

(b) Parenteral conscious sedation intravenous (IV), intramuscular (IM), subcutaneous (SC), submucosal (SM), intranasal (IN). To induce and maintain this type of conscious sedation on patients having dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) Professional Requirements:

(A) each dentist wishing to utilize these techniques must be permitted by the State Board of Dental Examiners (SBDE) to deliver parenteral conscious sedation after having met the educational requirements as detailed in §109.174(g)(2) of this title (relating to Sedation/Anesthesia Permit).

(B) parenteral conscious sedation shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas.

(2) Standard of Care Requirements. Each dentist must maintain the minimum standard of care as detailed in §109.173 of this title (relating to the Minimum Standard of Care) and shall in addition:

(A) adhere to the clinical requirements as detailed in paragraph (3) of this subsection;

(B) maintain a written informed parenteral conscious sedation consent for each dental patient on whom each procedure is performed; such consent shall specify that the risks related to the procedure include cardiac arrest, brain injury and death;

(C) maintain a time oriented, written anesthetic record which shall record dosages of anesthetic agents utilized and which shall include physiologic vital sign monitoring during the course of the procedure;

(D) maintain under continuous personal supervision auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of parenteral conscious sedation;

(E) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross.

(F) not allow a parenteral conscious sedation procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the State Board of Dental Examiners for the procedure being performed.

(3) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of parenteral conscious sedation:

(A) Patient Evaluation. Patients subjected to parenteral conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II) this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV) consultation with their primary care physicians or consulting medical specialists regarding potential procedure risk or special monitoring requirements should be considered.

(B) Pre-procedure preparation, informed consent:

(i) the patient and/or guardian must be advised of the procedure associated with the delivery of any sedative agents and the appropriate informed consent must be obtained;

(ii) if inhalation equipment is used in conjunction with parenteral conscious sedation, the equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;

(iii) determination of adequate oxygen supply must be completed prior to use with each patient;

(iv) baseline vital signs should be obtained;

(v) pre-treatment physical evaluation must be performed as deemed appropriate;

(vi) specific dietary restrictions must be delineated based on the technique used and patient's physical status;

(vii) appropriate verbal or written instructions regarding the procedure must be given to the patient and/or guardian;

(viii) an intravenous line must be established and secured throughout a procedure utilizing an intravenous conscious sedation technique and should be maintained with other parenteral conscious sedation techniques when the patient's physical or medical condition warrants, except as provided in subparagraph(F) of this paragraph.

(C) Personnel Requirements and Equipment:

(i) during the administration of parenteral conscious sedation the dentist and at least one member of the assistant staff who is currently competent in Basic Life Support (BLS) must be present;

(ii) any inhalation equipment utilized in conjunction with parenteral conscious sedation must have a fail safe system that is appropriately checked and calibrated;

(iii) if nitrous oxide and oxygen delivery equipment capable of delivering less than 25% oxygen is used, an in-line oxygen analyzer must be utilized;

(iv) the inhalation equipment must have an appropriate nitrous oxide/oxygen scavenging system;

(v) regardless of the sedation/anesthesia technique, the ability of the provider and/or the facility to deliver positive pressure oxygen must be maintained.

(D) Monitoring and Documentation. Maintain personal supervision of the patient during the induction of parenteral conscious sedation and during maintenance of parenteral conscious sedation for a period of time necessary to establish pharmacologic and physiologic vital sign stability. When a Certified Registered Nurse Anesthetist (CRNA) provides the parenteral conscious sedation care, he/she shall be under the direct supervision of the dentist in the dental office. Delegation of personal supervision may occur if a second dentist or physician anesthesiologist is delivering the anesthesia care.

(i) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygen saturation shall be evaluated continuously by pulse oximetry except as provided in subparagraph (F) of this paragraph.

(ii) Ventilation. Must perform observation of chest excursions and/or auscultation of breath sounds.

(iii) Circulation.

(I) Shall take and record blood pressure and pulse continually at least every ten minutes;

(II) Shall perform continuous EKG monitoring of all patients with electrocardioscopy, except as provided in subparagraph (F) of this paragraph.

(iv) Documentation. A written time-oriented anesthetic record must be maintained. Individuals present during the administration of parenteral conscious sedation shall be documented.

(E) Recovery and Discharge.

(i) positive pressure oxygen and suction equipment must be immediately available in the recovery area and/or operatory;

(ii) continual monitoring of vital signs when the sedation/anesthesia is no longer being administered; i.e., the patient must have continuous supervision until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the facility;

(iii) the dentist must determine and provide for documentation that oxygenation, ventilation, circulation, activity, skin color and level of consciousness are appropriate and stable prior to discharge;

(iv) must provide explanation and documentation of postoperative instructions to patient and/or a responsible adult at time of discharge;

(v) the dentist must determine that the patient has met discharge criteria prior to leaving the office.

(F) Special situations include multiple/combination techniques and single dosage techniques (IN, IM and SC) and types of special patients. In selected circumstances, parenteral conscious sedation may be utilized without establishing an indwelling intravenous line or continuous EKG monitoring with electrocardioscopy or pulse oximetry. These circumstances include sedation for brief procedures; young children managed entirely by non-intravenous techniques; or the establishment of intravenous access, EKG monitoring, or pulse oximetry after sedation has been induced due to poor patient cooperation. Vital sign monitoring and IV access during special situations should in as far as possible adhere to generally accepted standards of care and/or the American Academy of Pediatric Dentistry Sedation Guidelines published in 1999 for Level 1 and Level 2 conscious sedation, as those levels are defined in the guidelines. When these situations occur, the dentist responsible for administering parenteral conscious sedation shall document the reasons preventing the recommended preoperative or intraoperative management.

(G) Emergency Management.

(i) the sedation/anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility and treatment of emergencies associated with the administration of parenteral conscious sedation, including immediate access to pharmacologic antagonists and equipment for establishing a patent airway and providing positive pressure ventilation with oxygen;

(ii) advanced airway equipment, resuscitation medications must be available.

(iii) a defibrillator should be immediately available when ASA I and ASA II status patients are consciously sedated and, a defibrillator must be immediately available when ASA III and ASA IV status patients are consciously sedated.

(c) Parenteral deep sedation and/or general anesthesia. To induce and maintain parenteral deep sedation/general anesthesia on patients having dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) Professional Requirements:

(A) Each dentist wishing to utilize either of these techniques must be permitted by the State Board of Dental Examiners (SBDE) to deliver parenteral deep sedation and/or general anesthesia after having met the education requirements as detailed in §109.174 (g)(3) of this title (relating to Sedation/Anesthesia Permit).

(B) Parenteral deep sedation/general anesthesia shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas.

(2) Standard of care requirements. Each dentist must maintain the minimum standard of care as detailed in §109.173 of this title (relating to Minimum Standard of Care) and shall in addition:

(A) adhere to the clinical requirements as detailed in paragraph (3) of this subsection;

(B) maintain a written parenteral deep sedation and/or general anesthesia consent for each dental patient on whom each procedure is performed, such consent shall specify that the risks related to the procedure include cardiac arrest, brain injury and death:

(C) maintain a time oriented, written anesthetic record which shall record dosages of anesthetic agents utilized and shall include physiologic vital sign monitoring during the course of the procedure;

(D) maintain under continuous direct supervision a minimum of two auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of parenteral deep sedation and/or general anesthesia;

(E) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a

course sponsored by the American Heart Association or the American Red Cross;

(F) not allow a parenteral deep sedation and/or general anesthesia procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the State Board of Dental Examiners for the procedure being performed.

(3) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of parenteral deep sedation and/or general anesthesia:

(A) Patient Evaluation. Patients subjected to parenteral deep sedation/general anesthesia must be suitably evaluated prior to the start of any sedative/anesthetic procedure. In healthy or medically stable individuals (ASA I, II) this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV), consultation with their primary care physician or consulting medical specialist regarding potential procedure risk or special monitoring should be considered.

(B) Pre-Procedure preparation, informed consent:

(i) the patient and/or guardian must be advised of the procedure associated with the delivery of any sedative agents and the appropriate informed consent should be obtained;

(ii) if inhalation equipment is used in conjunction with parenteral deep sedation and/or general anesthesia, the equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;

(iii) determination of adequate oxygen supply must be completed prior to use with each patient;

(iv) baseline vital signs should be obtained;

(v) pre-treatment physical evaluation should be performed as deemed appropriate;

(vi) specific dietary restrictions must be delineated based on technique used and patient's physical status;

(vii) appropriate verbal or written instructions regarding the procedure must be given to the patient and/or guardian;

(viii) an intravenous line which is secured throughout the procedure must be established, except as provided in subparagraph (F) of this paragraph.

(C) Personnel and Equipment Requirements:

(i) a provider permitted to administer parenteral deep sedation and/or general anesthesia shall be designated to be in charge of the administration of anesthesia care;

(ii) two additional individuals who are currently certified in basic cardiopulmonary resuscitation or its equivalent, one of whom is trained in patient monitoring shall be present for the delivery of anesthesia care;

(iii) when the same individual administering the parenteral deep sedation and/or general anesthesia is performing the dental/oral and maxillofacial procedure, one of the additional two individuals present for the delivery of anesthesia care must monitor the patient and record required information on the anesthesia record;

(iv) equipment suitable to provide advanced airway management and advanced life support must be on premises and available for use.

(v) any inhalation equipment utilized in conjunction with parenteral deep sedation/general anesthesia must have a fail safe system that is appropriately checked and calibrated.

(vi) if nitrous oxide/oxygen delivery equipment capable of delivering less than 25% oxygen is used, an in-line oxygen analyzer must be utilized.

(vii) the inhalation equipment must have an appropriate nitrous oxide/oxygen scavenging system.

(viii) regardless of the sedation/anesthesia technique, the ability of the provider and/or the facility to deliver positive pressure oxygen must be maintained.

(D) Monitoring and Documentation. Maintain personal supervision of the patient during the induction and maintenance of parenteral deep sedation and/or general anesthesia and during maintenance of parenteral deep sedation and/or general anesthesia for a period of time necessary to establish pharmacologic and physiologic vital sign stability. When a Certified Registered Nurse Anesthetist (CRNA) provides the anesthesia care, he/she shall be under the direct supervision of the dentist in the dental office. Delegation of personal supervision may occur if a second dentist or physician anesthesiologist is delivering the anesthesia care.

(i) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygenation saturation shall be evaluated continuously by pulse oximetry;

(ii) Ventilation. Intubated patient - must auscultate breath sounds and monitor of end-tidal CO2. Non-intubated patient - auscultation of breath sounds, observation of chest excursions and/or monitoring of end-tidal CO2;

(iii) Circulation. Continuous EKG monitoring of all patients throughout the procedure with electrocardioscopy shall occur. Shall record blood pressure and pulse continually at least every five minutes;

(iv) Temperature. A device capable of measuring body temperature should be readily available, if needed, during the administration of parenteral deep sedation/general anesthesia. When agents implicated in precipitating malignant hyperthermia are utilized, continual monitoring of body temperature must be performed;

(v) Documentation. A written time-oriented anesthetic record must be maintained. Individuals present during the administration of parenteral deep sedation/general anesthesia shall be documented.

(E) Recovery and Discharge:

(i) oxygen and suction equipment must be immediately available in the recovery area and/or operatory;

(ii) continual monitoring of vital signs when the anesthetic is no longer being administered, i.e., the patient must have continuous supervision until oxygenation, ventilation, circulation and temperature, as indicated, are stable and the patient is appropriately responsive for discharge from the facility;

(iii) the dentist must determine and document that oxygenation, ventilation, circulation activity, skin color, level of consciousness and temperature, as indicated, are stable prior to discharge;

(iv) must provide explanation and documentation of post-operative instructions to patient and/or a responsible adult at the time of discharge.

(v) the dentist must determine and provide for documentation that the patient has met discharge criteria prior to leaving the office.

(F) Special situations include multiple/combination techniques single dosage techniques (IN, IM and SC) and types of special patients:

(i) In selected circumstances, parenteral deep sedation/general anesthesia may be utilized without first establishing an indwelling intravenous line or continuous EKG monitoring with electracardioscopy or pulse oximetry. These circumstances include parenteral deep sedation/general anesthesia for very brief procedures, or brief periods of time, which, for example, may occur in some pediatric patients; or the establishment of intravenous access after parenteral deep sedation/general anesthesia has been induced due to poor patient cooperation. Vital sign monitoring and IV access during special situations should in as far as possible adhere to generally accepted standards of care. When these situations occur, the dentist responsible for administering parenteral deep sedation/general anesthesia shall document the reasons preventing the recommended preoperative of intraoperative management.

(ii) Due to the fact that some dental patients undergoing parenteral deep sedation/general anesthesia are mentally and/or physically challenged, it is not always possible to suitably evaluate these patients prior to administering care. When these situations occur, the dentist responsible for administering the parenteral deep sedation/general anesthesia shall document the reasons preventing the recommended preoperative management.

(G) Emergency Management:

(i) the anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility and treatment of emergencies associated with the administration of parenteral deep sedation and/or general anesthesia including immediate access to pharmacologic antagonists and equipment for establishing a patent airway and providing positive pressure ventilation with oxygen;

(ii) advanced airway equipment, resuscitation medications and a defibrillator must also be immediately available;

(iii) appropriate pharmacologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 1999.

TRD-9905275
Jeffy R. Hill
Executive Director
State Board of Dental Examiners
Effective date: September 7, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 463-6400

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 142. Investigations and Hearings

40 TAC §142.32

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §142.32 concerning Investigations and Hearings without changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4753).

This section describes the procedures regarding administrative penalties for facilities and chemical dependency counselors.

These amendments are adopted to: clarify commission's authority to classify offenses not already included in the guidelines; complete the list of disciplinary actions available to the commission; establish commission's role in judging compliance; allow the commission to choose an administrative penalty or an alternate action when the total dollar value of a facility's assessed penalty is over $5,000; limit the number of facility waivers and require compliance as a precondition when appropriate; eliminate waiver of administrative penalties for counselors; clarify board and executive director responsibilities in approving administrative penalties; provide licensees an option to surrender the license in lieu of paying administrative penalties; and eliminate an outdated transition clause. In addition, amendments to the graphics that are included in this section are adopted to revise the method of assigning points for history of disciplinary action and to clarify that only full compliance is sufficient to receive credit for efforts to correct violations when assigning points.

No comments were received regarding adoption of the amendments.

These amendments are adopted under the Texas Health and Safety Code, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for the licensure of chemical dependency treatment facilities and under Texas Occupations Code, Chapter 504, which provides the commission with the authority to establish procedures for the licensure of chemical dependency counselors.

The codes affected by the adopted amendments are the Texas Health and Safety Code, Chapter 464 and Texas Occupations Code, Chapter 504.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 11, 1999.

TRD-9905025
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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Proposal publication date: June 25, 1999
For further information, please call: (512) 349-6733

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Chapter 143. Funding

40 TAC §§143.3, 143.17, 143.21, 143.25

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §143.17 and §143.21 and adopts new §143.3 and §143.25 concerning Funding. Sections 143.3, 143.17, and 143.21 are adopted without changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4754). Section 143.25 is adopted with changes to the proposed text.

These sections describe the service procurement plan, the process for funding decisions, the quarterly funding process and the developmental funding process.

These amendments and new sections are adopted to establish a service procurement plan, state that the commission may choose an alternative funding process when no fundable application is received, rename the developmental funding process to quarterly funding process to more accurately name this process, refine the quarterly funding process, and establish a new developmental funding process.

No comments were received regarding adoption of this amendment.

These amendments and new sections are adopted under the Texas Health and Safety Code, Chapter 461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the adopted amendments and new sections is the Texas Health and Safety Code, Chapter 461.

§143.25. Developmental Funding.

(a) The commission may initiate the developmental funding process when a competitive process has failed to elicit an acceptable offer for a service identified in the annual services procurement plan.

(b) The commission will establish funding criteria for each developmental project to identify the minimum standards that must be met by an applicant in order to receive funds. The funding criteria will be approved by the commission's executive director.

(c) A notice that funds are available for the service will be published on the commission's website, on the state's electronic business daily, and in the *Texas Register* for at least 21 days.

(d) Commission staff will meet with the Regional Advisory Consortium, local providers, and other community groups and stakeholders to provide information about the identified need and identify potential providers. Staff will facilitate development of consensus on an organization or coalition to apply for the developmental funding.

(e) If more than one provider is interested in the project, the commission will terminate the developmental process and initiate a competitive process.

(f) When only one prospective applicant is identified, commission staff shall provide consultation and technical assistance until the application for developmental funding is approved or denied by the executive director.

(g) After the application is submitted, an internal selection panel will review the proposal to determine whether it meets the minimum criteria established for the project and conduct a cost analysis or budget review.

(h) If the internal selection panel determines that the application meets the minimum criteria, it will recommend a level of funding and an implementation plan that includes:

(1) roles and responsibilities of the provider and commission staff;

(2) completion dates for key milestones; and

(3) conditions for payments related to achievement of key milestones.

(i) The panel's recommendations will be reviewed by the commission's executive management team and approved by the executive director.

(j) An organization funded through the developmental process must meet the application criteria stated in §143.15 of this title (relating to Application Criteria) when the contract is signed, except that a treatment applicant does not need to be licensed to provide the requested services to the proposed population until service delivery begins.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 11, 1999.

TRD-9905026
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 1999
Proposal publication date: June 25, 1999
For further information, please call: (512) 349-6733

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Chapter 144. Contract Requirements

Subchapter A. General Provisions

40 TAC §144.1, §144.21

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §144.1 and §144.21 concerning General Provisions. Section 144.21 is adopted with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4756). Section 144.1 is adopted without changes to the proposed text and will not be republished.

These sections describe the applicability of this chapter and the definitions of terms used in this chapter.

These amendments are adopted to clarify that this chapter applies to intervention programs as well as prevention and treatment programs funded by the commission and to add and/or clarify the definitions of terms used in this chapter. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments on §144.21 were received from the Association of Substance Abuse Programs and TCADA's Prevention managed Care Task Force.

Comment: The definition of abuse states that abuse may be perpetrated by staff or other clients/participants. Client abuse of other clients is serious and needs attention. However, there

is a concern about a client who curses another client and if this needs to be reported as an abuse incident. As the definition reads, every time a client is observed cursing another client an abuse report would be indicated. This could set up a huge reporting overload that may overstress the process.

Response: The commission concurs. This language has been removed from the definition.

Comment: The commission has created a new term, "combination" prevention programs. This is confusing, and appears to be unnecessary. For example, if you are doing a combination program are you a YPI or a YPP? Can it be both? We recommend eliminating the term. The Institute of Medicine's classification system is sufficient for describing populations and programs.

Response: The commission concurs and has removed this term.

Comment: The definition of documentation now references electronic records. How does one date and sign an "electronic" record? You may want to change to reflect what is expected in an electronic record versus a written record.

Response: The definition has been revised to include digital signatures.

Comment: In the definition of indicated program, consider revising the language as follows: "but are showing early warning signs such as failing grades, dropping out of school, and/OR use of alcohol and other gateway drugs".

Response: The definition has been revised as suggested.

Comment: In the definition of indicated program, please add wording similar to the following: "do not meet DSM-IV criteria for abuse or dependence, *but possess accepted risk factors or* are showing early warning signs such as, *but not limited to,* failing grades..."

Response: Individuals with accepted risk factors are appropriate for selective prevention programs. The phrase "but not limited to" is implied and does not need to be stated explicitly.

Comment: In the definition of intervention, please add wording similar to the following: "...utilizes multiple strategies designed *to prevent drug use by young children with designated risk factors,* to interrupt illegal use..." The addition of this or similar wording covers provision of intervention services to indicated populations such as substance-exposed infants and children.

Response: Under the Institute of Medicine classification system, individuals with known risk factors are placed in the selective population; individuals with risk behaviors are placed in the indicated population.

Comment: The Institute of Medicine's classification system is the national standard. That system describes universal, selective, and indicated prevention, but does not use the term intervention. The commission uses the term intervention in addition to the IOM terminology, which is confusing and inconsistent with national standards. We recommend eliminating the term intervention.

Response: The commission fully supports use of the IOM classification system. However, many people in the field still use the term intervention, and we believe it is useful to describe how "intervention" activities fit into the IOM classification. In addition, differentiating between prevention (universal and selective) activities and intervention (indicated) activities can be useful in identifying resources devoted to prevention versus intervention.

Comment: In the definition of minor remodeling, the last line includes the word "shall" which does not seem to belong.

Response: This word has been changed to "shell".

Comment: The definition of prevention does not mention adults. Although TCADA may choose to focus on youth in its funding and approach to prevention, the definition should include adults because prevention activities are not exclusively for youth and do include adults. For example, universal prevention programs reach adults through information dissemination.

Response: No change was proposed to this definition, so the commission cannot revise it. The suggestion will be considered for fiscal year 2001.

Comment: Under the definition of strategy, please insert: "A prevention or intervention approach..."

Response: The definition has been revised as suggested.

These amendments are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by these amendments is the Texas Health and Safety Code, Chapter 461.

§144.21. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse - Any act or failure to act which is done knowingly, recklessly or intentionally, including incitement to act, which caused or may have caused injury to a client or participant. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement. Client/participant abuse includes:

(A) any sexual activity between facility personnel and a client/participant;

(B) corporal punishment;

(C) nutritional or sleep deprivation;

(D) efforts to cause fear;

(E) the use of any form of communication to threaten, curse, shame, or degrade a client/participant;

(F) restraint that does not conform with chapter 148 of this title (relating to Facility Licensure);

(G) coercive or restrictive actions taken in response to the client's/participant's request for discharge or refusal of medication or treatment that are illegal or not justified by the client's/participant's condition; and

(H) any other act or omission classified as abuse by the Texas Family Code, §261.001.

(2) Admission - Formal documented acceptance of a prospective client to a treatment facility, based on specifically defined criteria.

(3) Access - Ability to obtain or make use of.

(4) Adolescent - An individual 13 through 17 years of age whose disabilities of minority have not been removed by marriage or judicial decree.

(5) Adult - An individual 18 years of age or older, or an individual under the age of 18 whose disabilities of minority have been removed by marriage or judicial decree.

(6) Aftercare - Structured services provided after discharge from a treatment facility which are designed to strengthen and support the client's recovery and prevent relapse.

(7) AIDS - Acquired Immune Deficiency Syndrome, the end stage of HIV infection. AIDS can only be diagnosed by a physician using criteria established by the National Centers for Disease Control and Prevention.

(8) Alternatives- A strategy that gives participants and their families the opportunity to take part in educational, cultural, recreational, and work-oriented substance-free activities. Activities under this strategy are designed to encourage and foster bonding with peers, family and community.

(9) Approve - Authorize in writing.

(10) Assessment - A process which identifies problems, needs, strengths, and resources as they pertain to ATOD use or abuse and related behaviors or activities. Assessments are used to initiate, maintain, or update individualized plans to address the identified needs and problems. See also Treatment Assessment.

(11) Assets (individual) - A set of essential building blocks that help young people grow up healthy, caring, and responsible. External assets include support, empowerment, boundaries and expectations, and constructive use of time. Internal assets include commitment to learning, positive values, social competencies, and positive identity.

(12) ATOD - Alcohol, tobacco and other drugs.

(13) Care coordination - Processes used to ensure an individual receives all needed substance abuse services through a seamless, organized delivery system.

(14) Case management - A systematic process to ensure clients receive all substance abuse, physical health, mental health, social, and other services needed to resolve identified problems and needs. Case management activities are provided by an accountable staff person and include:

(A) linking a client with needed services;

(B) helping a client develop skills to use basic community resources and services; and

(C) monitoring and coordinating the services received by a client.

(15) Chemical dependency - Substance dependence or substance abuse as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(16) Chemical dependency screening - A brief interview conducted in person or by phone to determine if there is a potential substance abuse problem. Screening may be performed by any trained staff person. If a potential problem is identified, the individual should be referred for a treatment assessment.

(17) Child - An individual under the age of 13.

(18) Client - An individual who has been admitted to a chemical dependency treatment facility licensed or funded by the commission and is currently receiving services.

(19) Client Data Systems (CDS) Forms - CDS forms include the Admission Report, Discharge Report, Follow-up Report, and CDS Facility Summary.

(20) Cognizant agency - The federal or state agency responsible for reviewing, negotiating, and approving an organization's cost allocation plans or indirect cost proposals.

(21) Commission - The Texas Commission on Alcohol and Drug Abuse.

(22) Community-based process - A strategy designed to enhance the ability of the community to provide effective prevention, intervention, and treatment services for ATOD problems and HIV infection through community mobilization and empowerment. Activities include multi-agency coordination and collaboration, networking, and development of written agreements among community organizations.

(23) Community coalition - A diverse group of community organizations and individuals organized to reduce ATOD problems in the community.

(24) Consenter - The individual legally responsible for giving informed consent for a client. This may be the client, parent, guardian, or conservator. Unless otherwise provided by law, a legally competent adult is his or her own consenter. Consenters include adult clients, clients 16 or 17 years of age, and clients under 16 years of age admitting themselves for chemical dependency counseling under the provisions of the Texas Family Code, §32.004.

(25) Continuum of services - A planned, coordinated service system which includes prevention, intervention, outreach, screening, referral, treatment and aftercare. Continuity of care has two dimensions and goals: cross-sectional, so that the services provided to an individual at any given time are comprehensive and coordinated; and longitudinal, so that the system provides comprehensive, integrated services over time and is responsive to changes in the person's needs.

(26) Counseling - Face-to-face interactions in which a counselor helps an individual, family or group identify, understand, and resolve issues and problems.

(27) Counselor - A qualified credentialed counselor or a counselor intern.

(28) Counselor intern (CI) - A person pursuing a course of training in chemical dependency counseling at a regionally accredited institution of higher education or an approved clinical training institution who has been designated as a counselor intern by the institution. The activities of a counselor intern shall be performed under the direct supervision of a qualified credentialed counselor (QCC).

(29) Crisis intervention - Services designed to intervene in situations which may or may not involve alcohol and drug abuse, and which may escalate and result in a crisis if immediate attention is not provided. Services include face-to-face individual, family, or group interviews/interactions and/or telephone contacts to identify needs.

(30) CSAP's six prevention strategies - The six strategies identified by the Center for Substance Abuse Prevention that are delivered in prevention and intervention programs. The six strategies are: prevention education and skills training, alternatives, problem

identification and referral, information dissemination, community-based process, and environmental and social policy.

(31) Cultural competency training - Training to improve an individual's ability to understand and interact with persons of a different culture. Culture defines the lifestyle of a distinct population and includes values, behavioral norms, and patterns of interpersonal relationships. It may be based on race, ethnicity, religion, age, gender, sexual orientation, or disability.

(32) Discharge - Formal, documented termination from a treatment facility. Discharge occurs when a client successfully completes treatment goals, leaves against professional advice, or is terminated for other reasons.

(33) Documentation - A written and/or electronic record that includes a date and a written or digital signature and provides authenticated evidence to substantiate compliance with standards, such as minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements.

(34) DSM-IV - The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Revised, published by the American Psychiatric Association. Any reference to DSM-IV is understood to mean the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.

(35) Ensure - To take all reasonable and necessary steps to achieve results.

(36) Environmental and social policy - A strategy designed to establish or change written and unwritten community standards, codes, and attitudes, thereby influencing incidence and prevalence of substance abuse in the general population. It includes activities that center on legal and regulatory initiatives and those that relate to the service and action-oriented initiatives.

(37) Evaluation (program) - A formal process for collecting, analyzing, and interpreting information about a program's implementation and effectiveness.

(38) Exit summary - Documentation of all referral and follow-up activities provided to individuals or family members receiving intervention counseling services.

(39) Exploitation - An act or process to use, either directly or indirectly, the labor or resources of a client/participant for monetary or personal benefit, profit, or gain of another individual or organization.

(40) Facility - A legal entity that provides one or more chemical dependency treatment programs.

(41) Family - The children, parents, brothers, sisters, other relatives, foster parents, guardians, or significant others who perform the roles and functions of family members in the lives of clients/participants.

(42) Financial assistance - A payment mechanism where payment is based on an approved line item budget.

(43) HIV - Human Immunodeficiency Virus, the virus that causes AIDS. Infection is determined through a testing and counseling process overseen by the Texas Department of Health. Being infected with HIV is not necessarily equated with having a diagnosis of AIDS.

(44) HIV Antibody Counseling and Testing - A structured counseling session performed by Prevention Counseling and Partner Elicitation (PCPE) counselors registered with the Texas Department of Health (TDH). It promotes risk reduction behavior for those at risk of infection with HIV and other sexually transmitted diseases and offers testing for HIV infection.

(45) Indicated program - An intervention program designed to prevent the onset of substance abuse in individuals who do not meet DSM-IV criteria for abuse or dependence, but are showing early warning signs such as failing grades, dropping out of school, and/or use of alcohol and other gateway drugs.

(46) Information dissemination - A strategy that provides awareness and knowledge of ATOD problems and/or HIV infection and their harmful effects on individuals, families, and communities. It also gives the general population information about available programs and services. Information dissemination is characterized by one-way communication from the source to the audience, with limited contact between the two. Information is disseminated through written communications and/or in-person community presentations.

(47) Intervention - A process that utilizes multiple strategies designed interrupt the illegal use of alcohol, tobacco and other drugs by youth and to break the cycle of harmful use of legal substances and all use of illegal substances by adults in order to halt the progression and escalation of use, abuse, and related problems. Intervention strategies target indicated populations.

(48) Intervention counseling - Face-to-face interactions to assist individuals, families, and groups to identify, understand, and resolve issues and problems related to ATOD use within a specific number of sessions or within a certain time frame. It is intended to intervene in problem situations and high risk behaviors which, if not addressed, may escalate to substance abuse or cause communicable disease.

(49) Key performance measures - Measures that reflect the services that are critical to the program design and intended outcomes of the program. Key performance measures are specified for all commission funded programs.

(50) Life skills training (treatment) - A structured program of training, based upon a written curriculum, to help clients manage daily responsibilities effectively and become gainfully employed. It may include instruction in communication and social interaction, stress management, problem solving, daily living, and decision making.

(51) Minor Remodeling - Work required to change the interior arrangements or other physical characteristics of an existing facility, or to install equipment in order to meet program requirements and needs. It does not include relocation of exterior walls, roof, and floors in order to increase the amount of space to be used, development or repair of parking lots, and completion of unfinished shell space to make it suitable for occupancy.

(52) Neglect - Actions resulting from inattention, disregard, carelessness, ignoring, or omission of reasonable consideration that caused, or might have caused, physical or emotional injury to a client/participant. Examples of neglect include, but are not limited to, failure to provide adequate nutrition, clothing, or health care; failure to provide a safe environment free from abuse; failure to maintain adequate numbers of appropriately trained staff; failure to establish or carry out an appropriate individualized treatment plan; and any other act or omission classified as neglect by the Texas Family Code, §261.001.

(53) Offer - To make available.

(54) Older adult - A person aged 55 or older.

(55) OMB - Office of Management and Budget.

(56) Outcome - The impact on the system or client/participant served.

(57) Outreach - Activities directed toward finding individuals who might not use services due to lack of awareness or active avoidance, and who would otherwise be ignored or underserved.

(58) Participant - An individual who is receiving prevention or intervention services.

(59) Policy - A statement of direction or guiding principle issued by the governing body.

(60) Prevention - A process that utilizes multiple strategies designed to preclude the onset of the illegal use of alcohol, tobacco and other drugs by youth. Prevention principles and strategies foster the development of social and physical environments that facilitate healthy, drug-free lifestyles. Prevention strategies target universal and selected populations.

(61) Prevention education and skills training - A curriculum-based strategy designed to develop decision-making, problem solving, and other life skills. It also provides accurate information about the harmful effects of ATOD use, abuse and addiction pertinent to the needs of the target population. The basis of activities under this strategy is interaction between the educator/facilitator and the participants. These activities are aimed to increase protective factors, foster resiliency, decrease risk factors and affect critical life and social skills relative to substance abuse and/or HIV risk of the participant and/or family members.

(62) Primary population - The individuals directly targeted to participate in and benefit from the program.

(63) Problem identification and referral - A strategy that provides services designed to ensure access to appropriate levels and types of services needed by youth or adult participants. It includes identification of those individuals who have used or are at risk of using alcohol, tobacco, and other drugs. This strategy does not include any activity designed to determine if a person is in need of treatment.

(64) Procedure - A step-by-step set of instructions.

(65) Program - A specific type of service delivered to a specific population as identified in the proposal.

(66) Protective factors - Characteristics within individuals and social systems which may inoculate or protect persons against risk factors and strengthen their determination to reject or avoid substance abuse.

(67) Provide - To perform or deliver.

(68) Provider - A distinct legal entity with an administrative and functional structure organized to deliver substance abuse services.

(69) Qualified credentialed counselor (QCC) - A licensed chemical dependency counselor or one of the professionals listed below:

(A) licensed professional counselor (LPC);

(B) licensed master social worker (LMSW);

(C) licensed marriage and family therapist (LMFT);

(D) licensed psychologist;

(E) licensed physician;

(F) certified addictions registered nurse (CARN);

(G) licensed psychological associate; and

(H) advance practice nurse recognized by the Board of Nurse Examiners as a clinical nurse specialist or nurse practitioner with a specialty in psyche-mental health (APN-P/MH).

(70) Referral - The process of identifying appropriate services and providing the information and assistance needed to access them.

(71) Retaliate - Take adverse action to punish or discourage a person who reports a violation or cooperates with an investigation, inspection, or proceeding. Such actions include but are not limited to suspension or termination of employment, demotion, discharge, transfer, discipline, restriction of privileges, harassment, and discrimination.

(72) Risk factor - A characteristic or attribute of an individual, group, or environment associated with an increased probability of certain disorders, addictive diseases, or behaviors.

(73) Screening - See chemical dependency screening.

(74) Secondary population - Family members and other individuals targeted to receive ancillary services because of their relationship to the participant/client.

(75) Selective program - A prevention program designed to target subsets of the total population that are deemed to be at higher risk for substance abuse by virtue of membership in a particular population segment. Risk groups may be identified on the basis of biological, psychological, social or environmental risk factors, and targeted groups may be defined by age, gender, family history, place of residence, or victimization by physical and/or sexual abuse. Selective prevention programs target the entire subgroup regardless of the degree of individual risk.

(76) Service record - The required documentation for all participants receiving intervention counseling services.

(77) Staff - Individuals employed by a provider to provide services in exchange for money or other compensation.

(78) Standard Precautions - Infection control guidelines written by the National Centers for Disease Control and Prevention which are designed to prevent transmission of communicable diseases such as HIV, hepatitis, sexually transmitted diseases and TB within the healthcare setting. The commission's interpretation of those guidelines are found in TCADA Workplace and Education Guidelines for HIV and Other Communicable Diseases.

(79) STDs - Sexually transmitted diseases.

(80) Strategy - A prevention or intervention approach implemented to support the overall design and goals of a program.

(81) Substance abuse - The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning.

(82) TCADA - Texas Commission on Alcohol and Drug Abuse.

(83) Treatment (chemical dependency) - A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(84) Treatment assessment - An assessment to determine if an individual meets the DSM-IV criteria for substance abuse or dependence and is need of treatment. The assessment also determines the level of treatment most appropriate for the individual.

(85) Unit cost - A payment mechanism in which a specified rate of payment is made in exchange for a specified unit of services.

(86) Universal program - A prevention program designed to address an entire population with messages and programs aimed at preventing or delaying the use and abuse of alcohol, tobacco, and other drugs. Universal prevention programs are delivered to large groups without any prior screening for substance abuse risk.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 11, 1999.

TRD-9905027
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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Proposal publication date: June 25, 1999
For further information, please call: (512) 349-6733

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Subchapter B. Contract Administration

40 TAC §§144.102-144.108, 144.123, 144.131, 144.133, 144.141, 144.142

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§144.102-144.104, 144.106, 144.107, 144.123, 144.131, 144.133, 144.141, 144.142 and adopts new §144.105 and §144.108. concerning Contract Administration. Sections 144.104, 144.105, and 144.108 are adopted with changes to the proposed text as published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4761). Sections 144.102-144.103, 144.106, 144.107, 144.123, 144.131, 144.133, 144.141 and 144.142 are adopted without changes to the proposed text and will not be republished.

These sections contain information regarding amendments, organizational and personnel changes, matching prevention awards, billing, payment, reporting, financial assistance for treatment services, program income, expenditures requiring prior approval, travel, procurement, and subcontracting.

These amendments and new sections are adopted to require that all requests for contract amendments must be received at least 60 days before the end of the contract period unless the commission's executive director grants a waiver; to replace the term executive director with chief executive officer; to clarify that required matching funds are calculated based on the total commission funded program expenditures; to consolidate all provisions related to billing into a single section; to state that the commission is the payor of last resort; to clarify the requirement for eligible providers to bill Medicaid for covered services; to describe the payment process; to establish that reports are due 30 days after the end of the reporting period; to replace the term electronic interface system with the web-based computer system; to describe the financial assistance payment mechanism for certain treatment service providers, including limiting the amount of time a treatment provider can remain on financial assistance and setting criteria that must be met before the transfer is made to unit cost reimbursement; to clarify that commission funded providers must not use inability to pay as a reason to refuse any commission funded service, not just treatment, to an otherwise eligible applicant; to set a maximum of $10,000 for work considered to be minor remodeling; to specify that tobacco products are not allowable travel costs; to increase the monetary maximums that determine what type of price or rate quotation is required for small purchases; and to add language which will allow providers to subcontract with individuals. Some revisions have been made in response to comments and, in some instances, wording has been changed for clarity of content or grammatical correctness.

Comments were received from the Association of Substance Abuse Programs, Brush Country Council on Alcohol and Drug Abuse and individuals.

Comment received regarding §144.102: The addition of allowing a variance, regarding contract amendments, under extenuating circumstances makes this acceptable.

Comment regarding §144.104: As currently worded this revision would indicate that programs must match all expenditures whether or not the total includes funds from United Way, community grants and charitable dollars. I do not believe levying a match for other sources of funding can be required by TCADA. Suggest it be revised to read: *Total TCADA funded program expenditures*.

Response: The rule has been revised as suggested to reflect the original intent. The following comments regarding §144.105 were received.

Comment: The consolidation of all billing information into one section is appreciated. Early work on rules seems to have eliminated some of the major concerns expressed by ASAP and we appreciate TCADA's openness and willingness to work on the issues identified early on in the rules revision process.

Response: The commission appreciates ASAP's input and cooperation.

Comment: The proposed rules require eligible providers to bill CHIP. This seems premature as the CHIP program is not scheduled to be up and running until May 2000. I would suggest not including CHIP until the program requirements and participation information is available in order to clear up any confusion in the interim.

Response: The commission has removed reference to CHIP from the rule.

Comment: The proposed rules require eligible providers to bill CHIP. My understanding is that some intervention activities are included in the CHIP package. Does this rule apply only to treatment providers? It is under billing, and prevention providers don't bill.

Response: The commission has removed reference to CHIP from the rule.

Comment: In STAR programs, providers cannot bill for Medicaid reimbursement unless they have been accepted into the network. If a provider for some reason is not accepted into the STAR Health Plan's Network, are they out of compliance? I

would suggest changing 144.105 (b) to replace the word SHALL to— *take all necessary steps to become*.

Response: The rule has been revised as suggested.

Comment: The rule says that any provider offering services which are eligible for Medicaid reimbursement must become a Medicaid provider and bill Medicaid. What if my Medicaid application is not approved? Am I in violation of the rule? Will I be sanctioned? The rule also says we must direct eligible clients to apply for Medicaid and provide assistance as needed to facilitate the enrollment process. If we have eligible clients who do not want to apply for Medicaid, are we in violation of the rule?

Response: If a provider's Medicaid application is not approved, the provider should take steps to address any identified deficiencies that caused the application to be rejected. If the reason for rejection is outside of the provider's control, the provider will not be sanctioned. Providers should communicate to their clients that application to Medicaid is not optional.

Comment: How does this apply if an adolescent client's parent or guardian refuses to cooperate with the process or draws it out over an extended period of time? Do we delay treatment until the process is complete? Can we bill TCADA and then begin billing CHIP or Medicaid when the parent provides the necessary information? At what point can we give up on trying to motivate the parent? You are asking programs to accept clients whether they can afford to pay or not, then complicating the payment requirements by having ultimate requirements under penalty of fraud for payment and recouping and rebilling. This whole section of responsibility and the certifying process, with all the ultimatums about who needs to be billed, should to be rethought and reworded. As a provider we now need guidelines as to when we can delay treatment. Otherwise we are becoming involved in a no win billing responsibility system that will need a CPA or lawyer to determine the outcome as to who gets billed when or who is liable for overbilling, recoupment, additional services and ultimately being sued or sanctioned. We are a treatment organization, not a CPA and legal firm.

Response: Because the commission is the payor of last resort, providers are expected to take reasonable and necessary steps to access Medicaid funds. This allows the state to leverage its resources and maximize funds available to purchase services for individuals who cannot qualify for other benefits. Medicaid also provides funding that can allow clients to access medical services that might not otherwise be available. The commission has provided guidance in the Provider Bulletin about Medicaid billing and some of the issues raised in this comment. Providers should never delay treatment. While clients are completing the application process, the services should be billed to the commission. When the client's application is approved, the provider should begin billing Medicaid. If allowed, the provider should bill Medicaid for services already provided (i.e, between the date of Medicaid application and the date of approval). Any retrospective reimbursement must be treated as program income because TCADA paid for the services during this interim period. Although the provider's mission is to provide services, any organization that chooses to receive state and federal funds must have the financial expertise to establish a sound billing system and maintain compliance with financial regulations.

Comment: Medicaid limits group size to eight clients. This means providers who have Medicaid clients may need create separate groups to accommodate that standard or limit all groups to eight clients.

Response: The provider must determine the most effective way of structuring their programs to comply with requirements of multiple funding sources.

The following are comments received regarding §144.108.

Comment: Current wording implies that all four criteria listed under (b) must be met in order to qualify for financial assistance. Suggest saying "*one of the following*" instead of *and*.

Response: The current wording is technically correct, but the rule has been revised as suggested to eliminate any confusion.

Comment: It would be helpful to have a definition for probation and what it means to a provider to be placed on probation. Does "probation" have a role in sanctions?

Response: The rule has been revised to state that the provider will be subject to increased monitoring and technical assistance.

Comment: Rural areas have specific characteristics that create substantial obstacles to maintaining treatment services under a unit-cost payment mechanism. They include: large, sparsely populated catchment areas; inadequate transportation; endemic poverty, higher than average rates of substance abuse due in part to cultural norms; a closed system with a culture of self-reliance that discourages clients from seeking help, especially from outsiders; and difficulty attracting staff. Clients from rural areas are low priorities for agencies outside the catchment area. These factors require treatment services inside the community which include an aggressive outreach component. In this environment, however, maximum charges for individual and group sessions at full capacity would not provide adequate funds to support an agency's overhead and payroll. Furthermore, this is not a realistic expectation since no business operates at a 100% capacity level. I respectfully request your special consideration of agencies serving rural areas due to the chronicity of these extenuating circumstances prevalent in rural areas. A revision in rule 144.108 that excludes rural agencies from the unit cost payment mechanism is our suggested solution to this issue.

Response: The rules allow the executive director to waive the requirement based on exceptional circumstances. The commission prefers to look at each case individually rather than granting a blanket waiver for all rural areas.

Comment received regarding §144.141: The increase to $2,000, $2,000 - $10,000, and $10,000 respectively are positive.

Response: These changes correspond to revisions in the state's purchasing guidelines.

These amendments and new sections are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by these amendments and new sections is the Texas Health and Safety Code, Chapter 461.

§144.104. Matching Prevention Awards.

(a) Unless waived in writing by the commission, all providers funded to provide prevention or intervention services shall contribute 5.0% of the total commission-funded program expenditures in matching funds.

(b) Match shall comply with requirements found in the applicable Office of Management and Budget (OMB) circulars as stated in §144.121 of this title (relating to Application of State and Federal Regulations).

§144.105. Billing.

(a) The Commission is the payor of last resort for chemical dependency treatment. A provider shall not bill the commission for services provided to a client if:

(1) the client is not financially eligible as described in §144.521 of this title (relating to Client Eligibility); or

(2) the client has access to another public or private source of payment for appropriate treatment.

(b) Any provider offering services which are that for Medicaid reimbursement shall take all necessary steps to become an approved provider.

(1) The provider must screen all clients for Medicaid eligibility. If a client is eligible but has not yet enrolled, the provider shall direct the client to apply for Medicaid benefits and provide assistance as needed to facilitate the enrollment process.

(2) The provider must bill Medicaid for all covered services delivered to eligible clients.

(c) The provider shall not bill the commission for a unit of service that has been billed to Medicaid or another third party payor who requires the provider to accept reimbursement as payment in full. If the third party payor denies payment or fails to respond or reimburse the provider for more than 60 days after the date the claim was billed, the provider may bill the commission for that unit of service. During the last month of the contract period, the provider may bill the commission for all outstanding third party reimbursement if the provider has reason to believe the payment request will be denied. If the provider charges the commission for a unit of service and then receives payment from another entity for the same unit of service, the revenue shall be treated as program income in accordance with §144.123 of this title (relating to Program Income).

(d) A provider shall not bill and receive payment in excess of actual costs from more than one entity for the same service at the same time for the same client. The total amount paid to a provider shall not exceed the actual costs of providing the services, either by client or in the aggregate. If double billing generates revenue that exceeds actual costs, the revenue shall be treated as program income in accordance with §144.123 of this title (relating to Program Income).

(e) The provider may accept funds from other funding sources that provide general support for the program.

(f) All requests for payment must be submitted no more than 30 days after the end of the contract period. The commission will not reimburse requests received after the 30-day period.

(g) Payment requests shall be accurate and submitted in the format required by the commission, and certified by the provider's authorized representative (specified in the contract).

§144.108. Financial Assistance for Treatment Services.

(a) The commission's standard payment mechanism for treatment services is the unit cost payment mechanism.

(b) The commission may place a treatment program on financial assistance if the provider does not have the resources to provide needed treatment services without start-up funding and meets at least one of the following criteria:

(1) has never before provided treatment or prevention services;

(2) will provide a specific type of commission-funded services for the first time;

(3) will provide commission-funded services in a specific geographic area or to a specific population for the first time; or

(4) will expand services at the commission's request to meet identified needs.

(c) Every treatment provider on financial assistance shall submit a plan for moving from financial assistance to a unit cost basis for reimbursement. The plan must include specific actions to be taken and target dates for completion.

(d) A treatment provider on financial assistance will be transferred to unit cost payment as soon as the provider meets financial and service stability criteria or at the end of 12 months, whichever is less.

(e) To meet financial and service stability criteria, the treatment program must:

(1) reach 80% of its client capacity as specified in the contract;

(2) implement written financial policies and procedures;

(3) achieve at least 80% of the state minimum performance measures targets in completion, follow-up and abstinence; and

(4) have a computed unit cost rate under 125% of the maximum rate for services provided.

(f) If a treatment provider does not meet the financial and service stability criteria after 12 months, the commission may place the provider on a more intensive schedule of review and technical assistance and extend financial assistance for up to four three-month periods.

(g) No treatment provider can remain on financial assistance for more than 24 months unless the commission's executive director grants a waiver based on extenuating circumstances.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 11, 1999.

TRD-9905029
Mark Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Effective date: September 1, 1999
Proposal publication date: June 25, 1999
For further information, please call: (512) 349-6733

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Alcoholic Beverage Commission

Title 16, Part III

The Texas Alcoholic Beverage Commission files its notice of intention to review its rules contained in Title 16, Texas Administrative Code, Chapter 41 governing auditing. This review is conducted pursuant to Appropriations Act, 1997, House Bill 1, Article IX, §167.

The commission will conduct its review through December 31, 1999, and will receive comments on whether the need for any rule contained within this chapter still exists and whether any of these rules require amendment. Amendments or repeal of existing rules proposed by the commission will appear in the Proposed Rules section of the *Texas Register* and will be acted on in accordance with normal state rule making procedures.

Comments may be directed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas, 78711.

TRD-9905348
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Filed: August 24, 1999

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The Texas Alcoholic Beverage Commission files its notice of intention to review its rules contained in Title 16, Texas Administrative Code, Chapter 43 governing accounting. This review is conducted pursuant to Appropriations Act, 1997, House Bill 1, Article IX, §167.

The commission will conduct its review through December 31, 1999, and will receive comments on whether the need for any rule contained within this chapter still exists and whether any of these rules require amendment. Amendments or repeal of existing rules proposed by the commission will appear in the Proposed Rules section of the *Texas Register* and will be acted on in accordance with normal state rule making procedures.

Comments may be directed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas, 78711.

TRD-9905349
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Filed: August 24, 1999

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Texas Higher Education Coordinating Board

Title 19, Part I

The Texas Higher Education Coordinating Board proposes to readopt Chapter 25, Optional Retirement Program, in accordance with the Appropriations Act, §167.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed readoption may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas, 78711.

TRD-9905326
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: August 23, 1999

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State Securities Board

Title 7, Part VII

The State Securities Board (Agency), beginning September 1999, will review and consider for readoption, revision, or repeal Chapter 115, Dealers and Salesmen, in accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature. The rules to be reviewed are located in Title 7, Part VII, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting this chapter continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by

the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to David Weaver, General Counsel, P.O. Box 13167, Austin, Texas, 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-9905340
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: August 23, 1999

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Texas Water Development Board

Title 31, Part X

The Texas Water Development Board files this notice of intent to review 31 TAC, Part X, Chapter 377, Hydrographic Survey Program, in accordance with the General Appropriations Act, House Bill 1, Article IX, §167. The board finds that the reason for adopting the chapter continues to exist.

As required by §167, the board will accept comments and make a final assessment regarding whether the reason for adopting each of the rules in Chapter 377 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Ron Pigott, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to rpigott@twdb.state.tx.us or by fax at 512/463-5580.

TRD-9905264
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: August 18, 1999

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Adopted Rule Reviews

Texas Alcoholic Beverage Commission

Title 16, Part III

The Texas Alcoholic Beverage Commission adopts the review of Title 16, Texas Administrative Code, Chapter 37, governing rules of practice in contested case hearings and penalties as published in the June 25, 1999 edition of the *Texas Register*, 24 TexReg 4848.

The commission finds that §§37.1 through 37.46 have been superseded by enactment of rules found at 1 TAC §155.1 through §155.59 by the State Office of Administrative Hearings. These rules will be repealed by separate submission to the *Texas Register*. The commission further finds that the reasons for adopting §§37.60 and 37.61 continue to exist and those rules are hereby readopted.

No comments were received regarding the review of Chapter 37.

TRD-9905346
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Filed: August 24, 1999

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The Texas Alcoholic Beverage Commission adopts the review of Title 16, Texas Administrative Code, Chapter 39, governing ports of entry as published in the June 25, 1999 edition of the *Texas Register*, 24 TexReg 4848.

The commission finds that the reasons for adopting the rules contained within this chapter continues to exist and these rules are hereby readopted.

No comments were received regarding the review of Chapter 39.

TRD-9905347
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Filed: August 24, 1999

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Texas Department of Banking

Title 7, Part II

The Finance Commission of Texas, on behalf of the Texas Department of Banking (department), has completed the review of Texas Administrative Code, Title 7, Chapter 15, Subchapters C, D, E, and G, comprised of §§15.41-15.42, regarding Bank Offices; §§15.61-15.62, regarding Trust Company Applications; §15.81, regarding Change of Control Applications; and §§15.121-15.122, regarding Charter Amendments and Certain Changes in Outstanding Stock, as noticed in the July 2, 1999 issue of the *Texas Register* (24 TexReg 5029). The prior notice also incorrectly listed Subchapter F, consisting of §§15.101-15.117, as subject to review. The rules in subchapter F were adopted subsequent to September 1, 1997, and are not yet subject to review.

No comments were received with respect to §§15.41, 15.42, 15.61, 15.62, 15.81, 15.121, and 15.122. The finance commission readopts these sections, pursuant to the requirements of the Appropriations Act of 1997, HB 1, Article IX, Section 167, and finds that the reason for adopting these rules continues to exist. The rules were substantially rewritten and revised effective January 5, 1996, to be in accordance with the recently enacted Texas Banking Act, and several of the rules will be proposed for revision prior to the end of calendar year 1999, for the reasons discussed in the following paragraph.

The department acknowledges that amendments to many of the reviewed rules are necessary to reflect changes in statutory substance and organization resulting from recent legislation. In particular, Act approved May 29, 1999 (House Bill 2066), 76th Legislature, Articles 1-7, effective September 1, 1999, relating generally to interstate banking and branching, enacts new Finance Code, Title 3, Subtitle G (Chapters 201-204), and also extensively amends Texas Civil Statutes, Article 342a-1.001 et seq (the Texas Trust Company Act), to enable interstate fiduciary transactions. Corporate applications and filing fees must be revised to address interstate acquisitions and branching in both the banking industry and the trust company industry. Further, Act approved May 10, 1999 (Senate Bill 1368), 76th Legislature, §7.16, effective September 1, 1999, relating to nonsubstantive codification, codifies the Texas Trust Company Act as

new Finance Code, Title 3, Subtitle F (Chapters 181-186 and 199). This will require revision of the rules to reflect the correct statutory cites as well as explanatory commentary to address the complexities resulting from a codification concurrent with amendments to the source law. The department will be proposing amendments to address these issues prior to the end of calendar year 1999.

TRD-9905306

Everette D. Jobe
Certifying Official
Texas Department of Banking
Filed: August 20, 1999

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Request for Proposals

Pursuant to the Texas Agriculture Code, 12.002, and 12.007; Senate Bill 1089, 73rd Regular Session, Chapter 686, §1, and the General Appropriations Act, Acts 1995, 74th Legislature, Regular Session, Chapter 1063, at 5821-5826, the Texas Department of Agriculture (the department) hereby requests proposals for projects for the period January 1, 2000 through December 31, 2000, that use and expand the use of integrated pest management (IPM) in agriculture. A total amount of up to $300,000 may be awarded. Two categories will be considered: Geographically Specific Implementation Projects and Statewide Projects.

Geographically Specific Projects.

The proposed implementation projects should be for demonstration of IPM principles and technology, the establishment of educational programs to expand the use of biologically intensive IPM, or delivering biologically intensive IPM programs to farmer/rancher groups in a short period of time. Proposals must be submitted by non-profit producer, educational, or research organizations involved in IPM programs. Joint efforts between public and private entities are encouraged. Implementation proposals involving research other than IPM implementation research and proposals for chemical pesticide efficacy testing are not eligible for grant funds. Implementation projects will be awarded no more than $15,000 per project. Preference will be given to: proposals that emphasize the final development and delivery of new technologies; proposals that compare different IPM strategies; proposals that implement new IPM tactics, strategies or components of IPM systems; proposals that seek implementation of IPM practices in Texas counties and areas where such practices have not been used; proposals which demonstrate economic benefits for Texas; proposals which implement IPM in non-traditional commodities.

Statewide Projects.

The department is soliciting proposals for the following statewide projects:

(1) Internship Project: A program to develop and deliver trained, experienced IPM professionals by providing college students in the crop production/protection disciplines the opportunity to earn college credits while gaining expertise and experience in non-profit, producer operated, professionally supervised IPM programs at the county level. An amount up to $25,000 is available for this project.

(2) Database Management Project: Develop/improve, field test and provide a "train the trainer" workshop for a computerized database management system capable of accessing, evaluating and summarizing current and historical pest and natural enemy field data and crop development status. An amount up to $35,000 is available for this project.

(3) Cotton Crop Management Manual: Develop, publish and deliver an integrated crop management manual for Texas cotton addressing production practices from planting to harvest and prevention, monitoring and management of major insect, weed and disease pests. An amount up to $40,000 is available for this project.

Proposals for statewide projects must be submitted by non- profit producer, educational, or research organizations involved in IPM programs. Each proposal in both geographically-based and statewide project categories must include the following: a project summary not to exceed one page; rationale/justification, the name, address, phone/fax numbers and e-mail address of the principal investigator; project objectives; project work plan; description of the beneficial anticipated impact on agriculture and deliverables; and a detailed project budget using the department's budget form. The entire proposal may not exceed six pages, including cover letter and attachments. Please include any matching funding that the project has or has applied for. Please send one original with ten additional copies.

All approved projects must be completed by December 31, 2000 with the exception of the cotton crop management manual project. Upon completion of the project, a final compliance narrative and one-page project summary will be due within four weeks. The quality of these reports may be used to evaluate further funding requests. All awards will be subject to audit and periodic reporting requirements. Proposals should be submitted to: Trey Powers, Texas Department of Agriculture, 1700 North Congress Avenue, 9th Floor, Austin, Texas 78701. Mr. Powers may be contacted by phone at (512) 475-1615 or by fax at (512) 463-8170 for additional information about preparing the proposal. Proposals must be received no later than 5:00 p.m. Central Standard Time, October 30, 1999.

All proposals will be evaluated by a proposal review committee made up of persons knowledgeable in IPM programs and practices, both scientists and non-scientists. Proposals will be evaluated based on the

requirements set forth above. The announcement of the grant awards will be made by December 31, 1999.

TRD-9905405
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: August 25, 1999

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of August 12, 1999, through August 20, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: City of Victoria; Location: The project is located on a tract of land bound by Vine Street and Red River Street to the east and south respectively, and the Riverside Golf Course and Bluff Street to the west in northwest Victoria, Victoria County, Texas; CCC Project No.: 99-0292-F1; Description of Proposed Action: The applicant proposes to place a raw water intake structure and pump station on the west bank of the Guadalupe River to transfer water to existing off-channel reservoirs for storage prior to treatment. The reservoirs consist of 10 ponds in an abandoned gravel quarry that cover a total of approximately 0.3 acres; Type of Application: U.S.A.C.E. permit application #21751 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: AIMCOR, Inc.; Location: The project is located in the Galveston Channel, at the Westport Marine Terminal 4800 Old Port Industrial Road in Galveston, Galveston County, Texas. The USGS quad reference map is Galveston, Texas; CCC Project No.: 99-0293-F1; Description of Proposed Action: The applicant requests an amendment to retain five 35-foot-wide by 195-foot-long barges that have been filled with water and grounded on the Galveston Bay bottom, place an additional four 35-by 195-foot barges or 780 feet of sheet pile, and install seventeen 26-inch mooring pilings; Type of Application: U.S.A.C.E. permit application #21237 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Cabot Oil & Gas Corporation; Location: The project is located in the SW/2 of State Tract 48; the SW/2 of State Tract 49; the NE/2 and the SW/2 of State Tract 52; and the NE/2 and the SW/2 of State Tract 53 in Trinity and Galveston Bays, Chambers County, Texas; CCC Project No.: 99-0294-F1; Description of Proposed Action: The applicant requests an Oil Field Development Permit to install, operate, and maintain structures and equipment for oil and gas drilling, production, and transportation activities; Type of Application: U.S.A.C.E. permit application #21753 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Phillips Petroleum Company; Location: The project is located in Galveston Bay, State Tracts 207, 208, 218 and 219 in Chambers County, Texas; CCC Project No.: 99-0295-F1; Description of Proposed Action: The applicant requests an Oil Field Development Permit to perform oil and gas production activities in State Tracts 207, 208, 218 and 219 in Galveston Bay; Type of Application: U.S.A.C.E. permit application #21659 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: U.S. Fish & Wildlife Service - TX Point National Wildlife Refuge; Location: The project site is located along the north boundary of the Texas Point National Wildlife Refuge, adjacent to and south of State Highway 87, approximately 2 miles west of Sabine Pass in Jefferson County, Texas; CCC Project No.: 99-0296-F1; Description of Proposed Action: The applicant proposes to extend the existing dike (cattle walk) 430 feet to the refuge parking lot; Type of Application: U.S.A.C.E. permit application #21738 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Sterling Exploration & Production Co., L.L.C.; Location: The project is located in Matagorda Bay, Calhoun County, Texas; CCC Project No.: 99-0297-F1; Description of Proposed Action: The applicant proposes to amend Department of the Army Oilfield Development Permit 21641 to add State Tracts 51, 52, 66, 67, 68, 69, 70, 84, 85, 88, 93, 94, 97, 103, 104, 120 and 129. No discharge of dredged or fill material will be involved; Type of Application: U.S.A.C.E. permit application #21641(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is, or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-9905393
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: August 25, 1999

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Comptroller of Public Accounts'

Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the July 9, 1999, issue of the *Texas Register* (24 TexReg 5231).

The consultant will assist the Comptroller in conducting a management and performance review of the San Antonio Independent School District, produce periodic progress reports and assist in producing a final report.

The contract is awarded to MGT of America, Inc., 2123 Centre Point Boulevard, Tallahassee, Florida 32308. The total dollar value of the contract is not to exceed $398,825.00 in the aggregate. The contract was executed August 23, 1999, and extends through August 31, 2000.

MGT of America, Inc. will assist the Comptroller in preparing a final report, which will be made public on or about March 8, 2000.

TRD-9905407
David R. Brown
Legal Counsel
Comptroller of Public Accounts
Filed: August 25, 1999

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Article 1D.003 and 1D.009 for the period of 08/30/99 - 09/05/99 is 18% for Consumer[1]/Agricultural/ Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Article 1D.003 and 1D.009 for the period of 08/30/99 - 09/05/99 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9905363
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 24, 1999

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Texas Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from Cameron Credit Union (Houston) seeking approval to merge with Mission Employees Federal Credit Union (Houston) with Cameron Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-9905403
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: August 25, 1999

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Texas Commission for the Deaf and Hard of Hearing

Request for Proposals

The Texas Commission for the Deaf and Hard of Hearing announces the issuance of a Request for Proposals (RFP) for services to eliminate communication barriers and to guarantee equal access for individuals who are deaf or hard of hearing. Funding is available to provide the following:

(1) Advocacy projects for communication access which includes sign language and oral interpreting and Communication Access Realtime Translation (CART) services;

(2) Regional Specialist services projects to facilitate access to the services of state and local agencies/organizations for persons who are deaf or hard of hearing, and which can include limited case management services; and

(3) Outreach demonstration and training projects for the telecommunications access equipment distribution program.

Contact:

Parties interested in submitting a proposal should contact the Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas, 78711, 512-407-3250 (Voice) or 512-407-3251 (TTY), to obtain a complete copy of the RFP. The RFP is also available for pick-up at 4800 North Lamar, Suite 310, Austin, Texas, 78756 on Friday, September 3, 1999 during normal business hours. The RFP is not available through fax.

Closing Date:

Proposals must be received in the Texas Commission for the Deaf and Hard of Hearing Office, 4800 North Lamar, Suite 310, Austin, Texas, 78756 no later than 5 p.m. (CDT), on October 4, 1999. Proposals received after this time and date will not be considered.

Award Procedure:

All proposals will be subject to evaluation by a review panel based on the evaluation criteria set forth in the RFP. The panel will determine which proposal best meets these criteria and will make a recommendation to the Executive Director who will then make a recommendation to the Commission. The Commission will make the final decision. An applicant may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Commission reserves the right to accept or reject any or all proposals submitted. The Texas Commission for the Deaf and Hard of Hearing is under no legal or other obligation to execute a grant on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits the Commission to pay for any costs incurred prior to the execution of a grant. The anticipated schedule of events is as follows:

Issuance of RFP–September 3, 1999;

Proposals Due–October 4, 1999, 5 p.m. (CDT); and

Grant Execution–On or about November 1, 1999.

TRD-9905400
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: August 25, 1999

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Texas Education Agency

Request for Applications Concerning Texas After-School Initiative for Middle School, 1999-2000

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-99-027 from eligible school districts or shared services arrangements (formerly cooperatives) of school districts to implement, for students of middle school age, quality after-school programs that include the identified three required components and the additional specifications identified in House Bill 1, General Appropriations Act, Rider 64, 76th Texas Legislature. Open-enrollment charter schools and education service centers are not eligible for this particular grant program.

Description. The Texas After-School Initiative for Middle School is to primarily serve students at risk of academic failure and/or at risk of committing juvenile offenses. The program is to be implemented for students of middle school age, 10 years through 14 years old, who attend schools in high-risk/high-crime zip codes as identified by the juvenile referrals gathered by the Texas Criminal Justice Policy Council. The students attend schools with physical addresses in the designated zip codes or reside in the designated zip codes.

Campuses within districts develop proposals that directly address the needs of students and schools incorporating the three required components: (1) an academics-based curriculum linked to the Texas Essential Knowledge and Skills; (2) a character/citizenship education component; and (3) a plan for parental and/or mentor involvement.

The Texas After-School Initiative for Middle School has three major goals for students of middle school age. These goals are to: increase academic achievement for participating students; decrease the referrals to the juvenile justice system for participating students; and to involve parents and/or mentors.

Dates of Project. The Texas After-School Initiative for Middle School will be implemented during the 1999- 2000 school year(s). Applicants should plan for a starting date of no earlier than January 3, 2000, and an ending date of no later than August 31, 2000.

Project Amount. Funding will be provided for approximately 100 projects. Projects are funded based on a predetermined range. The range is as follows: (1) an application implementing an after-school program at one site will qualify for a grant not to exceed $75,000 for the 1999-2000 school year; (2) an application implementing an after-school program at two to four sites will qualify for a grant not to exceed $150,000 for the 1999-2000 school year; or (3) an application implementing an after-school program at five sites or more will qualify for a grant not to exceed $225,000 for the 1999-2000 school year.

A single district may submit more than one application for different programs serving different campuses. Each application will be reviewed, scored, and selected separately. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-99-027 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code.

Further Information. For clarifying information about the RFA, contact Geraldine Kidwell, Division of Curriculum and Professional Development, Texas Education Agency, (512) 463-9581.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Thursday, October 21, 1999, to be considered.

TRD-9905401
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: August 25, 1999

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General Land Office

Notice of Public Hearings

The Texas General Land Office (GLO) will hold public hearings to allow the public to comment on the proposed addition of new Subchapter B of Chapter 15 relating to Coastal Erosion Planning and Response. The new subchapter concerns implementation of the Joe Faggard Coastal Erosion and Response Act, 76th Legislature, Regular Session, Senate Bill 1690 (CEPRA). The proposed rules outline the process by which the GLO will evaluate and assist in the funding of coastal erosion studies and projects in cooperation with qualified project partners. The GLO may expend funds from the coastal erosion response account, which was established by CEPRA, to support a study or project cooperatively undertaken by the GLO and a qualified project partner.

The locations and times for the public hearings are as follows:

Wednesday, September 29, 1999:

Brownsville, 6-8 p.m., Cameron County Commissioner's Courtroom (4th Floor), 964 East Harrison.

Thursday, September 30, 1999:

Corpus Christi, 6-8 p.m., Texas A&M University-Corpus Christi, University Center, Lone Star Ballroom, 6300 Ocean Drive.

Friday, October 1, 1999:

Houston, 6-8 p.m., University of Houston-Clear Lake, Bayou Building, Room 1313, 2700 Bay Area Boulevard.

TRD-9905395
David Dewhurst
Commissioner
General Land Office
Filed: August 25, 1999

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Golden Crescent Workforce Development Board

Request for Bids

The Golden Crescent Workforce Development Board, the entity who oversees workforce development programs in the Golden Crescent Workforce Development Area, is soliciting program operators for the Golden Crescent Workforce Centers located in Port Lavaca, Cuero, Goliad, Gonzales, Edna, Yoakum, and Victoria, Texas.

Interested parties may request an Request for Proposals package from September 3-13, 1999, by calling (361) 576-5872. Deadline for responses is 5 p.m., on September 24, 1999. An informative bidders' conference will be held on September 7, 1999, for all interested parties.

TRD-9905384

Laura G. Sanders

Executive Director

Golden Crescent Workforce Development Board

Filed: August 24, 1999

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Texas Department of Health

Correction of Error

The Texas Department of Health adopted 25 TAC §§61.1-61.9, 130.19, 143.1-143.2, 143.4, 143.7-143.9, 143.11, 143.14, 143.16-143.20, 295.10, and 295.73. The rules appeared in the August 10, 1998, issue of the *Texas Register* (24 TexReg 6076, 6080, 6091).

Due to Texas Register error:

The effective dates were published as September 15, 1999, and should have been published as August 15, 1999.

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Fees Charged by General and Special Hospitals for Providing Patient Health Care Information

The Texas Department of Health licenses general and special hospitals in accordance with the Health and Safety Code, Chapter 241. In 1995, the Texas Legislature amended the law to address the release and confidentiality of health care information. In accordance with §241.154(e) of the Health and Safety Code, the fee for providing a patient's health care information has been adjusted 2.2% to reflect the most recent changes to the consumer price index as published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor. The BLS measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers.

With the adjustment, the fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $32.76; and

(A) a charge for each page of:

(i) $1.09 for the 11th through the 6th page of the provided copies;

(ii) $.55 for the 61st through the 400th page of the provided copies;

(iii) $.28 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(2) if the requested records are stored on any microform or other electronic medium, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $49.14; and

(A) $1.09 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

This is published only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that any fees charged for health care information are in accordance with the Health and Safety Code, Chapter 241.

If you have any questions, please call John M. Evans, Jr., Hospital Licensing Director, Health Facility Licensing Division, Texas Department of Health, at 512/834-6648.

Filed: August 19, 1999

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TRD-9905279
Susan K. Steeg
General Counsel
Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

Licensing Actions for Radioactive Materials

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Houston	Memorial Village Surgery Center	L05272	Houston	00	07/30/99

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Amarillo	Northwest Texas Healthcare	L02054	Amarillo	54	08/10/99
Arlington	The University of Texas at Arlington	L00248	Arlington	33	07/30/99
Arlington	Arlington Memorial Hospital Foundation Incorporated	L02217	Arlington	55	08/02/99
Austin	Syncor International Corporation	L02117	Austin	64	08/04/99
Brownsville	Physician Reliance Network Inc	L04985	Brownsville	06	08/02/99
Corpus Christi	Radiology Associates	L04169	Corpus Christi	24	08/11/99
Dallas	Syncor International Corporation	L02048	Dallas	95	08/02/99
Dallas	Physician Reliance Network Incorporated	L03989	Dallas	16	08/11/99
Dallas	Texas Cardiology Consultants	L04997	Dallas	13	08/01/99
El Paso	The University of Texas at El Paso	L00159	El Paso	41	08/02/99
El Paso	Syncor International Corporation	L01999	El Paso	91	07/30/99
El Paso	Syncor International Corporation	L01999	El Paso	92	08/12/99
Fort Worth	Consultants in Radiology PA	L05014	Fort Worth	07	08/03/99
Grapevine	Baylor Medical Center at Grapevine	L03320	Grapevine	16	07/30/99
Harlingen	Valley Diagnostic Medical and Surgical Clinic PA	L02933	Harlingen	23	08/11/99
Hereford	Hereford Regional Medical Center	L03111	Hereford	10	08/04/99
Houston	Kelsey Seybold Clinic PA	L00391	Houston	48	08/12/99
Houston	Memorial Hermann Hospital System	L00439	Houston	61	08/02/99
Houston	Memorial Hermann Hospital System Incorporated	L00650	Houston	52	08/06/99
Houston	Baylor College of Medicine Office Environmental Sfty	L00680	Houston	68	08/03/99
Houston	Park Plaza Hospital	L02071	Houston	36	08/05/99
Houston	Houston Northwest Medical Center	L02253	Houston	43	08/04/99
Laredo	Mercy Regional Medical Center	L01306	Laredo	44	08/05/99
Littlefield	Lamb County Hospital DBA Lamb Healthcare Center	L04973	Littlefield	01	07/30/99
McKinney	George Graham Md Columbia Medical Center	L02415	McKinney	17	08/05/99
Odessa	Big State X-ray	L02693	Odessa	30	08/11/99
Round Rock	TN Technologies Inc	L03524	Round Rock	51	08/03/99
San Antonio	CTRC Research Foundation	L03350	San Antonio	23	08/12/99
San Antonio	Nuclear Medical Imaging Consultants	L05134	San Antonio	03	08/02/99
San Antonio	The University of Texas Health Science Ctr	L05217	San Antonio	01	08/05/99
Texas City	Industrial Fabricators Incorporated	L04935	Texas City	10	07/28/99
Through out Texas	Texas A & M University	L00448	College Station	98	08/12/99

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Through out Texas	Schlumberger Technology Corporation	L01833	Sugarland	111	07/30/99
Through out Texas	Lead Based Paint Detection Corporation	L04586	Houston	06	07/29/99
Tyler	Nutech Incorporated	L04274	Tyler	28	08/05/99

Tyler	Physician Reliance Network Incorporated	L04788	Tyler	02	08/11/99
Waco	Providence Health Center	L01638	Waco	43	08/12/99
Wharton	South Texas Medical Clinics PA	L05163	Wharton	03	08/02/99

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Dallas	Southern Methodist University	L00443	Dallas	20	08/03/99
Graham	City of Graham DBA Graham Regional Medical Center	L03271	Graham	18	08/11/99
Houston	Memorial Hermann Hospital System Incorporated	L00650	Houston	51	08/03/99
Orange	Central Pharmacy Services Incorporated	L04785	Orange	14	08/02/99
San Antonio	Southwest Foundation for Biomedical Research	L00468	San Antonio	43	08/10/99
San Antonio	San Antonio Independent School District	L01918	San Antonio	08	07/30/99
San Antonio	O'Neill and Associates Pa	L03710	San Antonio	08	08/10/99
San Marcos	Southwest Texas State University Biology Department	L03321	San Marcos	11	08/05/99
Wichita Falls	North Texas Isotopes	L04810	Wichita Falls	03	08/12/99

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Dallas	Genescreen Incorporated	L04183	Dallas	03	08/04/99
Tyler	University of Texas at Tyler	L03803	Tyler	07	08/09/99

[graphic]

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9905324
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 23, 1999

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Notices of Emergency Cease and Desist Orders

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Associates in Urology (registrant-R14555) of Fort Worth to cease and desist performing abdomen (KUB) x-ray procedures with the Bennett x-ray unit (Model Number C-325S; Serial Number B7137B) until the exposure at skin entrance meets the Texas radiation requirements. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau authorizes the registrant to perform the procedure.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9905320
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 23, 1999

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Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Corpus Christi Radiology Center (licensee L-04493) of Corpus Christi to immediately cease and desist performing nuclear medicine diagnostic procedures using any licensable quantities of radiopharmaceutical material. The bureau determined that unauthorized ordering, possession and/or use of radioactive material constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the licensee has a physician who is authorized to order and dispense licensable quantities of radiopharmaceutical.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9905322
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 23, 1999

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Notice of Emergency Impoundment Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Melba Karen Adams, D.D.S. (registrant-R21194) of Houston to immediately surrender to the bureau for impoundment all sources of radiation possessed under the certificate of registration. The bureau determined that the registrant had failed to comply with the Order of Revocation issued by the bureau on December 21, 1998. Continued operation of x-ray equipment without a valid certificate of registration and failure to comply with the Order of Revocation constitute an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau has received, reviewed, and approved the actions taken to ensure compliance with the Order of Revocation.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9905321
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 23, 1999

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Notice of Default Order on Healthsouth Corporation

A default order was entered regarding Healthsouth Corporation, doing business as Healthsouth Katy Diagnostic; Docket Number D856-1999-0002; Texas Department of Health (department) Registration Number M-00102; Compliance Number M983114 on May 11, 1999, assessing $1,400 in administrative penalties.

Information concerning this order may be obtained by contacting Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3189, by calling 512/834-6688, or by visiting 8407 Wall Street, Austin, Texas.

TRD-9905318
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 23, 1999

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Notices of Preliminary Reports for Assessments of Administrative Penalties and Notices of Violations

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to J. Gordon Gregory, M.D., doing business as Office Imaging (registrant R-22554) of Dallas. A total penalty of $8,000 is proposed to be assessed the facility for alleged violations of 25 Texas Administrative Code §289.226.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9905317
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 23, 1999

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Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Texas Oncology, P.A. of Bedford. A total penalty of $8,000 is proposed to be assessed the facility for alleged violations of 25 Texas Administrative Code §289.252.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9905319
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 23, 1999

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Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to M.D. Anderson Cancer Network - Tarrant County (licensee-L00047) of Fort Worth. A total penalty of $5,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code §289.252.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9905323
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 23, 1999

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Notice of Request for Proposals for Independent Contractors to Perform FDA Retail Tobacco Inspections

INTRODUCTION: The Texas Department of Health (department) Office of Tobacco Prevention and Control (OTPC) announces the expected availability of fiscal year 2000 United States Food and Drug Administration (FDA) funding to provide for the inspection of tobacco retailers to monitor compliance with FDA regulations on the sale of tobacco products to minors. It is expected that the contract will begin on or about November 1, 1999, and will be made for a eight month budget period within a project period of five years.

Approximately $168,000 is expected to be available to fund forty individuals. Specific dollar amounts to be awarded to each applicant will depend upon the number of inspections the individual and the OTPC agree upon for that individual to perform. Continued funding in future years will be based upon the availability of funds and documented progress of the project during the prior budget period. Funding may vary and is subject to change for each budget period.

The Request for Proposals (RFP) will be available from the Office of Tobacco Prevention and Control on September 17, 1999. To obtain a copy you may call A.J. Mitchell at 1-800-345-8647 or you may download the RFP from the Texas Marketplace at http://www.marketplace.state.tx.us. Questions regarding the RFP should also be addressed to Ms. Mitchell.

ELIGIBLE APPLICANTS: Eligible applicants are individuals with either teacher certification and experience as classroom teachers; a Texas nursing license and public health or school nursing experience; experience as Drug and Alcohol Resistence Education (DARE) police officers or community liaison police officers working with youth under eighteen years of age; health or food officers employed by state or local government; or prior experience in performing FDA retail tobacco inspections. Individuals must be United States citizens, over the age of eighteen and not have any DWI/DUI offenses in the past two years. Applicants must have a valid Texas driver's license and proof of insurance. Applicants must have knowledge of and experience in maintaining confidentiality. Applicants must be able to accurately and completely follow reporting procedures and deadlines as instructed. Individuals must submit a current resume and have no financial interest in any tobacco company in order to be commissioned as an FDA Officer under the authority of the Federal Food, Drug and Cosmetic Act.

SUBMISSION REQUIREMENTS: The original and three copies must be received by the Office of Tobacco Prevention and Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756 no later than 5:00 P.M. Central Daylight Saving Time on October 11, 1999.

REVIEW AND AWARD CRITERIA: The applications will be screened by the RFP Evaluation Committee of the Office of Tobacco Prevention and Control. Any applications that are incomplete or received after the deadline will not be considered. Eligible and complete applications will be reviewed and scored by the evaluators according to the guidelines detailed in the RFP.

TRD-9905385
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 25, 1999

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Notice of Request for Proposals for Prevention of Perinatal HIV in Dallas County, Texas

INTRODUCTION AND PURPOSE

The Texas Department of Health (department) requests proposals to perform Human Immunodeficiency Virus (HIV) prevention activities among African-American women of childbearing age (14-44) in Dallas, Texas. Approximately $124,000 will be awarded to one entity on a competitive basis. The purpose of these funds is to provide culturally sensitive and appropriate HIV prevention outreach to the target population in order to prevent perinatal transmission of HIV. Project activities will include:

Outreach to identify high-risk pregnant and non-pregnant women to prevent HIV infection;

Refer pregnant HIV infected women early in pregnancy to begin prenatal care and prophylaxis;

Provide prevention counseling for pregnant and non-pregnant women;

Provide HIV and pregnancy testing for high risk women; and

Link high risk women of childbearing age to appropriate referrals to family planning, HIV services, prenatal care, substance abuse services and intimate partner violence intervention services.

ELIGIBLE APPLICANTS

Eligible applicants include governmental, public or private non-profit entities located within Dallas County who deliver services to Dallas County residents. Applicants must have demonstrated ability to provide culturally-sensitive outreach to African-American women at risk for/or who have HIV disease and establish trust with this target group. Entities that have had State or federal contracts terminated within the last 24 months for deficiencies in fiscal or programmatic performance are not eligible to apply.

AVAILABILITY OF FUNDS

Approximately $124,000 is expected to be available to fund one project with a 12-month budget. The specific dollar amount to be awarded will depend upon the merit and scope of the proposed project. Award of these funds is contingent upon annual federal grant awards to the department from the Centers for Disease Control and Prevention (CDC). The Request for Proposals (RFP) is made prior to the award of Federal funds to allow applicants sufficient time to respond to the application due date. Award of these funds is contingent upon satisfactory completion of the grant application and the contract negotiation process.

TO OBTAIN RFP

To obtain a copy of the RFP, contact Laura Ramos at Texas Department of Health, 1100 West 49th Street, Austin, Texas, Telephone, 512/490-2525, or send an E-mail request to laura.ramos@tdh.state.tx.us. No copies of the RFP will be released prior to September 24, 1999. Applications are due November 24, 1999.

TRD-9905362
Susan K. Steeg
General Counsel
Texas Department Health
Filed: August 24, 1999

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Texas Higher Education Coordinating Board

Request for Proposals

Approximately $4.0 million will be available to support K-12 teachers and other staff in gaining access to professional development in mathematics, science, and reading during 2000-2001.

Funds will be competitively distributed in Texas under The Dwight D. Eisenhower Professional Development Program. The Eisenhower program was most recently reauthorized in 1994 as Title II of the Improving America's School Act of 1994. Proposals for funding must be submitted by February 1, 2000 to the Texas Higher Education Coordinating Board. Applications will be available October 15, 1999.

The Eisenhower Professional Development Program is designed to support training and retraining of elementary and secondary teachers and other staff in mathematics, science, and reading. Approximately 50-55 grants ranging from $50,000 - $75,000 will be made to support collaborative programs between higher education institutions and local school districts in the areas of mathematics and science; approximately 4-5 grants ranging from $50,000 - $75,000 will be made to support collaborative programs between higher education institutions and local school districts in the area of reading.

The Board will approve recommendations for 2000 - 2001 awards at its April 20-21, 2000 meeting. Projects are funded under this application for 17 months and must be completed by September 30, 2001.

All public and private colleges and universities and non-profit organizations of proven effectiveness in educating mathematics, science, and reading teachers are eligible to apply for grants under the Dwight D. Eisenhower Professional Development Program.

For information, contact the Eisenhower office at (512) 483-6318.

TRD-9905335
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: August 23, 1999

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Texas Department of Housing and Community Affairs

Request for Proposals for Master Servicer and/or Subservicer

I. SUMMARY.

The Texas Department of Housing and Community Affairs (TDHCA) has issued a Request for Proposal (RFP) for Master Servicer and/or Subservicer. TDHCA anticipates the need for Master Servicer and/or Subservicer relating to its Single Family Mortgage Revenue Bond Programs. The Master Servicer and/or Subservicer must demonstrate qualifications and experience in one or more areas that are listed in the RFP.

Proposals must be received at the TDHCA no later than, **4:00 p.m., on September 17, 1999**. For a copy of the RFP contact Tim Almquist at 512-475-3356.

TRD-9905296
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 20, 1999

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Texas Department of Insurance

Correction of Error

The Texas Department of Insurance proposed new §§21.2801-21.2809. The rules appeared in the July 26, 1999, issue of the *Texas Register* (24 TexReg 6003).

Due to agency error:

In the preamble the hearing date and time was inadvertently left off and replaced with "xx". The hearing date and time should be September 8, 1999, at 9:00 a.m.

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Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of ST. PAUL FIRE AND MARINE INSURANCE COMPANY to DISCOVERY PROPERTY & CASUALTY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Chicago, Illinois.

Application to change the name of WHITE MOUNTAINS INSURANCE COMPANY to MOUNTAIN VALLEY CASUALTY COMPANY, a foreign fire and casualty company. The home office is in Manchester, New Hampshire.

Application for admission to the State of Texas by COMPANION PROPERTY & CASUALTY INSURANCE COMPANY, a foreign fire and casualty company. The home office is Columbia, South Carolina.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9905410
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 25, 1999

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Notice

Pursuant to the Texas Insurance Code, Art. 1.33B(c)(5) and 28 TAC §1.1317(3), the Commissioner of Insurance will hold a public meeting to consider the proposal for decision and the exceptions, replies, briefs and arguments of the parties in SOAH Docket No. 454-98-1807.G. In the Matter of Presumptive Premium Rates for Credit Life and Credit Accident & Health Insurance. The parties are permitted to make oral argument before the Commissioner in the same order of presentation as in the benchmark hearing. The public meeting is scheduled for September 22, 1999 at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

TRD-9905338
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 23, 1999

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Notice of Hearing

The Commissioner of Insurance will hold a hearing under Docket 2419 on Tuesday, September 14, 1999, at 9:00 a.m. in room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas. The purpose of this hearing is to receive

comments regarding the proposed amendments to §§5.9801, 5.9804, 5.9805, and 5.9806, Subchapter R, Temporary Rate Reduction for Certain Lines of Insurance, 28 Tex. Admin. Code. Individuals who wish to present comments at the hearing will be asked to register immediately prior to the hearing.

A formal notice of these proposed amendments was published in Volume 24 TexReg 6239 of the *Texas Register* on Friday, August 13, 1999. A hearing regarding the recommended percentage of rate reductions was held on Wednesday, August 25, 1999. Any comments received during the previous hearing will be considered part of the record regarding the proposed amendments.

The proposed amendments and the statutory authority for the proposed amendments was published in the August 13, 1999 issue of the *Texas Register* (24 TexReg 6239-6243).

TRD-9905339
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 23, 1999

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Texas Lottery Commission

Request for Proposals for Marketing Research Services

The purpose of this Request for Proposals ("RFP") is to obtain proposals from qualified vendors to provide research services for marketing-related projects for the Texas Lottery Commission ("Texas Lottery").

The intent of the Texas Lottery is to obtain market research services for all current Texas Lottery games and products, any future games and products, and services for the tracking of Texas Lottery player and retailer demographics and psychographics.

Proposers responding to this RFP are expected to provide the Texas Lottery with information, evidence and demonstrations that will permit awarding a contract in a manner that best serves the interests of the Texas Lottery.

This RFP is issued in accordance with the State Lottery Act, Texas Government Code Chapter 466, and the procurement rules of the Texas Lottery. All responses to this RFP are subject to the requirements of the State Lottery Act, regardless of whether specifically addressed in either the RFP or the response. All Proposers should read and be familiar with the State Lottery Act.

The time schedule for awarding a contract under this RFP is shown below. The Texas Lottery reserves the right to amend the schedule. If significant changes are made, all Prospective Proposers will be notified.

August 20, 1999–Issuance of RFP

September 3, 1999–Letter of Intent to Propose Due (4:00 p.m., CT) (Late Letters of Intent will not be considered.)

September 3, 1999–Written Questions Due (4:00 p.m., CT)

September 10, 1999–Answers to Written Questions Issued

September 20, 1999–DEADLINE FOR PROPOSALS (4:00 p.m., CT) (Late Proposals will not be considered.)

September 28, 1999–Announcement of Apparent Successful Proposer (or as soon as possible thereafter)

To obtain a copy of this RFP, please contact Kaye Schultz, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas, 78761-6630, telephone (512) 344-5050, or by facsimile at (512) 344-5189.

TRD-9905359
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 24, 1999

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Request for Proposals for Radio Network Production

The purpose of this Request for Proposals ("RFP") is to obtain proposals for the writing, production and distribution of a weekly syndicated radio show for the Texas Lottery Commission ("Texas Lottery"). The shows shall consist of two one-minute programs per week in English and in Spanish. The program format may include theme music, on-air talent as program host(s), and pre-recorded actualities. The program format is subject to change at the direction of the Texas Lottery.

The intent of the Texas Lottery is to obtain the services of an audio production facility to produce a regularly syndicated Lottery radio show. The Successful Proposer will be required to provide the technical equipment, talent and crew necessary to produce the show, duplicate it and ship the audio tapes to the radio stations that comprise the Texas Lottery Radio Network. The Successful Proposer will be responsible for providing the audio tapes to those stations according to established schedules.

The Successful Proposer may be responsible for writing scripts for the show. The Successful Proposer may be responsible for adapting the English-language scripts into Spanish. The Successful Proposer may be responsible for creating and composing original theme music for the show.

Proposers responding to this RFP are expected to provide the Texas Lottery with information, evidence, and demonstrations that will permit awarding a contract in a manner that best serves the interests of the Texas Lottery.

This RFP is issued in accordance with the State Lottery Act, Texas Government Code Chapter 466, and the procurement rules of the Texas Lottery. All responses to this RFP are subject to the requirements of the State Lottery Act, regardless of whether specifically addressed in either the RFP or the response. All Proposers should read and be familiar with the State Lottery Act.

The time schedule for awarding a contract under this RFP is shown below. The Lottery reserves the right to amend the schedule. If significant changes are made, all potential Proposers will be notified.

August 17, 1999–Issuance of RFP

August 31, 1999–Letter of Intent to Propose Due (4:00 p.m., CT) (Late Letters of Intent will not be considered.

August 31, 1999–Deadline for Questions (4:00 p.m. CT)

September 2, 1999–Official Response to Questions

September 8, 1999–Deadline for Proposals (4:00 p.m., CT) (Late Proposals will not be considered.)

September 13, 1999–Announcement of Apparent Successful Proposer (or as soon as possible thereafter)

To obtain a copy of this RFP, please contact Kaye Schultz, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas, 78761-6630, telephone (512) 344-5050, or by facsimile at (512) 344-5189.

TRD-9905269
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 18, 1999

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission submitted a Draft 1999 Update. The draft appeared in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6345).

Due to agency error:

Throughout the document, "Draft May 1999" should be replaced with "Draft August 1999".

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Enforcement Orders, Week Ending August 25, 1999

A supplemental agreed order was entered regarding CHEVRON U.S.A. INC. RELATIVE TO THE PORT ARTHUR REFINERY, Docket No. 1997-0404-IHW-E; SWR 30004 on August 16, 1999.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512)239-6224 or Nell Tyner, Correction Action Coordinator at (512)239-6740, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OSO COTTON BURRS, INC., Docket No. 1998-0110-AIR-E; TNRCC ID No. NE-0333-L; Enforcement ID No. 12145 on August 16, 1999 assessing $13,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512)239-4113 or Carl Schnitz, Enforcement Coordinator at (512)239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EDWIN HEMPEL, Docket No. 1998-0203-OSI-E; OSSF Installer Certification 3527; Enforcement ID No. 12219 on August 16, 1999 assessing $2,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512)239-6224, Brian Lehmkuhle, Enforcement Coordinator at (512)239-4482 or Robert Brach, Enforcement Coordinator at (512)239-6239, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARTHUR M. GONZALEZ, GONZ, INC. & RIAZ ENTERPRISES, Docket No. 1998-0111-PST-E; TNRCC ID No. 55032 on August 16, 1999 assessing $9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Gross, Staff Attorney at (512)239-1736 or Sushil Modak, Enforcement Coordinator at (512)239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PERMIAN PRODUCERS, INC., Docket No. 1997-0829-AIR-E; TNRCC ID No. ML-0319-T; Enforcement ID No. 11804 on August 16, 1999 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512)239-0677 or Tel Croston, Enforcement Coordinator at (512)239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAY CARSON DBA CORNUDAS RESTAURANT AND CAFE WATER SYSTEM, Docket No. 1996-1966-PWS-E; TNRCC PWS No. 1150013 on August 16, 1999 assessing $880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Otten, Staff Attorney at 239-1738 or Sandy VanCleave, Enforcement Coordinator at (512)239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TAHOE INDUSTRIES, INC., Docket No. 1998-1022-MLM-E; TNRCC Air ID No. TH0190C; TNRCC Solid Waste ID No. 40276; Enforcement ID No. 12775 on August 16, 1999 assessing $13,000 in administrative penalties with $12,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Robin Houston, Staff Attorney at (512)239-0682 or Sabelyn Pussman, Enforcement Coordinator at (512)239-6061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JAMES WILGANOWSKI, Docket No. 1998-0278-OSI-E; OSSF Installer Certification No. 1716; Enforcement ID No. 12218 on August 16, 1999 assessing $2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512)239-2029 or Laurie Eaves, Enforcement Coordinator at (512)239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NAUSHAD VIRANI DBA CIRCLE B ONE STOP, Docket No. 1998-0842-PWS-E; TNRCC ID No. 12497; PWS ID No. 1460112 on August 16, 1999 assessing $600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Scott McDonald, Staff Attorney at (512)239-6005 or Subash Jain, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MIKE HANSEN, Docket No. 1998-0542-LII-E; Enforcement ID No. 12560 on August 16, 1999 assessing $2,344 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard O'Connell, Staff Attorney at (512)239-5528 or Laurie Eaves, Enforcement Coordinator at (512)239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DAVID SANDERS, Docket No. 1996-1873-LII-E; TNRCC ID No. LI0004837; Enforcement ID No. 10151 on August 16, 1999 assessing $4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nathan Block, Staff Attorney at (512)239-4706 or Karen Berryman, Enforcement Coordinator at (512)239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RUSSELL MILNE DBA FOUR SEASONS & ASSOCIATES, Docket No. 1999-0039-IRR-E; (Not Licensed) on August 16, 1999 assessing $938 in administrative penalties with $188 deferred.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512)239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FKP, INC., Docket No. 1998-0912-IWD-E; Water Quality Permit No. 03889; Enforcement ID No. 13060 on August 16, 1999 assessing $16,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512)239-4113 or Michael Meyer, Enforcement Coordinator at (512)239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CONTINENTAL HOMES OF TEXAS, L.P., Docket No. 1999- 0037-EAQ-E; Edwards Aquifer Protection Program Plan No. 98081903 on August 16, 1999 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512)239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding PATRICK PAYTON, Docket No. 1998-0909-OSS-E; Expired OSSF Installer Certification No. 5761; Enforcement ID No. 12624 on August 16, 1999 assessing $5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512)239-2029 or Laurie Eaves, Enforcement Coordinator at (512)239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding CHARLES KEITH FIELDS, Docket No. 1998-0787-OSI-E; Installer Certificate of Registration No. 19 on August 16, 1999 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512)239-1559 or Michael Meyer, Enforcement Coordinator at (512)239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAN PEDRO CANYON WATER COMPANY, Docket No. 1998- 1324-PWS-E; PWS No. 2330011; Enforcement ID No. 7190 on August 16, 1999 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512)239-0884, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VILLITA WEST CONDOMINIUMS, INC., Docket No. 1998- 1351-PWS-E; PWS No. 2270337 on August 16, 1999 assessing $4,050 in administrative penalties with $810 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Thompson, Enforcement Coordinator at (512)239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PRAIRIE GROVE WATER SUPPLY CORPORATION, Docket No. 1998-0791-PWS-E; PWS No. 0030027; Enforcement ID No. 6010 on August 16, 1999 assessing $6,125 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Camille Morris, Staff Attorney at (512)239-3915 or Sandy VanCleave, Enforcement Coordinator at (512)239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ST. THOMAS MORE CATHOLIC CHURCH, Docket No. 1999- 0070-PWS-E; PWS No. 2270292 on August 16, 1999 assessing $125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512)239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NOLAN COUNTY FRESH WATER SUPPLY DISTRICT NO. 1, Docket No. 1998-0310-PWS-E; PWS No. 12296 on August 16, 1999 assessing $1,688 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512)239-2548 or Terry Thompson, Enforcement Coordinator at (512)239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MIKE FISHER DBA WESTERN OAKS VILLAGE, Docket No. 1998-1453-PWS-E; PWS ID No. 2200211; Enforcement ID No. 13196 on August 16, 1999 assessing $3,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512)239-0492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding NORMAN BARNETT & BURNETTE CLAY DBA VILLA UTILITIES AKA REED ESTATES WATER SYSTEM, Docket No. 1998-0003-PWS-E; PWS No. 1010945; Enforcement ID No. 11985 on August 16, 1999 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512)239-2029 or Elvia Maske, Enforcement Coordinator at (512)239-0884, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding CAROL NORRA DBA NORTH FORK MOBILE HOME PARK, Docket No. 1998-0594-PWS-E; PWS No. 1011926; Enforcement ID No. 12566 on August 16, 1999 assessing $4,969 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nathan Block, Staff Attorney at (512)239-4706 or Sandy VanCleave, Enforcement Coordinator at (512)239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RIDGE HARBOR UTILITY COMPANY, Docket No. 1998-0971- MWD-E; WQ Permit No. 13631-001 on August 16, 1999 assessing $3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Gerberding, Enforcement Coordinator at (512)239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF CENTER, Docket No. 1998-0906-MWD-E; WQ Permit No. 10063-003; Enforcement ID No. 12795 on August 16, 1999 assessing $15,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512)239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF DETROIT, Docket No. 1998-1383-MWD-E; WQ Permit No. 10724-001; Enforcement ID No. 13021 on August 16, 1999 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Eric Reese, Enforcement Coordinator at (512)239-2611, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAIQUE & SON, INC. DBA STAR FOOD MART, Docket No. 1998-1300-PST-E; PST Facility ID No. 0063907; Enforcement ID No. 5391 on August 16, 1999 assessing $11,500 in administrative penalties with $2,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Julia McMasters, Enforcement Coordinator at (512)239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAMMY'S GROCERY, INCORPORATED, Docket No. 1998- 1259-PST-E; Facility ID No. 0045487; Enforcement ID No. 13033 on August 16, 1999 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512)239-2029 or Gayle Zapalac, Enforcement Coordinator at (512)239-1136, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZUBADA MEMON ENTERPRISES, INC. AND ANEES DBA AZ FOOD STORE, Docket No. 1998-1176-PST-E; PST Facility ID No. 0049655 on August 16, 1999 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Scott McDonald, Staff Attorney at (512)239-6005 or Frank Muser, Enforcement Coordinator at (512)239-6951, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EXXON COMPANY, U.S.A., Docket No. 1998-1161-PST-E; PST Facility ID No. 26685 on August 16, 1999 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard O'Connell, Staff Attorney at (512)239-5528 or Gayle Zapalac, Enforcement Coordinator at (512)239-1136, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CIRCLE T QUICK STOP, INC., Docket No. 1998-0693-PST-E; TNRCC ID No. 39052; Enforcement ID No. 4926 on August 16, 1999 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Wright, Staff Attorney at (512)239-2269 or Gilbert Angelle, Enforcement Coordinator at (512)239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISMAT B. BOULOS, Docket No. 1998-0756-PST-E; TNRCC Facility ID No. 0026686; Enforcement ID No. 12632 on August 16, 1999 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Otten, Staff Attorney at (512)239-1738 or Mohammed Issa, Enforcement Coordinator at (512)239-2545, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DARRELL WILLIAMS, Docket No. 1998-0330-PST-E; Enforcement ID No. 11855 on August 16, 1999 assessing $3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512)239-2548 or Julia McMasters, Enforcement Coordinator at (512)239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KARKLEAN, INC. DBA VINTAGE CAR WASH, Docket No. 1998-0853-AIR-E; Account No. EE-0988-E; Enforcement ID No. 12647 on August 16, 1999 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Camille Morris, Staff Attorney at (512)239-3915 or Stacey Young, Enforcement Coordinator at (512)239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding TXI OPERATIONS, L.P., Docket No. 1995-0663-AIR-E; TNRCC ID No. ED-0066-B on August 16, 1999.

Information concerning any aspect of this order may be obtained by contacting Lisa Dyar, Staff Attorney at (512)239-5692 or David Henrichs, Enforcement Coordinator at (512)239-1883, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLAY SEAL, Docket No. 1998-0835-AIR-E; TNRCC ID No. HB-0021-R on August 16, 1999 assessing $800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Hernandez, Staff Attorney at (512)239-0612 or Stacey Young, Enforcement Coordinator at (512)231-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding REYNOLDS METALS COMPANY, Docket No. 1998-1343-AIR- E; Account No. TA-0236-L; Enforcement ID No. 13080 on August 16, 1999 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512)239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DRILLING SPECIALTIES COMPANY, Docket No. 1998-1540- AIR-E; Account No. MQ-0023-L on August 16, 1999 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512)239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROSENDO ALVIZO, JR. DBA R & A MARBLE, Docket No. 1998-0843-AIR-E; Air Account No. CP-0442-R; Enforcement ID No. 12756 on August 16, 1999 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Camille Morris, Staff Attorney at (512)239-3915 or Stacey Young, Enforcement Coordinator at (512)239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHN COX, Docket No. 1998-1298-AIR-E; Air Account No. GB- 0525-B on August 16, 1999 assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Otten, Staff Attorney at (512)239-1738 or Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding LARRY WILLIAMS DBA WILCO AUTO REPAIR, Docket No. 1998-0900-AIR-E; Air Account No. GI-0215-L; Enforcement ID No. 423 on August 16, 1999 assessing $6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Camille Morris, Staff Attorney at (512)239-3915 or Carl Schnitz, Enforcement Coordinator at (512)239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding THE NEW JATS CORPORATION D.B.A. GRAHAM FOOD MARKET AND LAUNDRYMAT, Docket No. 1999-0276-PST-E; TNRCC Facility ID No. 43157; Enforcement ID No. 13470 on August 11, 1999.

Information concerning any aspect of this order may be obtained by contacting John Wright, Staff Attorney at (512)239-2269 or Sushil Modak, Enforcement Coordinator at (512)239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9905399

LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 25, 1999

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Invitation to Comment-Draft July 1999 Water Quality Management Plan Update

The Texas Natural Resource Conservation Commission (TNRCC) announces the availability of the Draft July 1999 Update to the Water Quality Management Plan for the State of Texas.

The Water Quality Management Plan (WQMP) is developed and promulgated pursuant to the requirements of §208 of the federal Clean Water Act (CWA). The Draft July 1999 WQMP Update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once TNRCC certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, EPA approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by TNRCC. The Draft July 1999 WQMP Update also contains service area populations for listed wastewater treatment facilities, and documentation of Designated Management Agency resolutions.

A copy of the Draft July 1999 Update may be viewed on the TNRCC's web page at http://www.tnrcc.state.tx.us/water/quality/index.html, and at the TNRCC Central Office at 12015 North Interstate 35, Building A, Library.

Comments on the Draft July 1999 Update to the Water Quality Management Plan shall be provided in written form and sent to Suzanne Vargas, Texas Natural Resource Conservation Commission, Water Permits and Resource Management Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4619. Comments may be faxed to (512) 239-4410, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., October 4, 1999. This deadline for comments will be extended to 5:00 p.m., October 18, 1999, if a member of the public submits a written request for such an extension which is received by Suzanne Vargas by 5:00 p.m., October 4, 1999. For further information, contact Suzanne Vargas, Texas Natural Resource Conservation Commission, Water Permits and Resource Management Division, MC 150, (512) 239-4619, e-mail svargas@tnrcc.state.tx.us.

TRD-9905402
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 25, 1999

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Notice of Environmental Protection Agency Approval

Notice is hereby given that the United States Environmental Protection Agency (EPA) published approval of the Texas state plan and rules for municipal solid waste landfills in the June 17, 1999 edition of the *Federal Register* (64 FR 32427) with an effective date of August 16, 1999. The Texas state rules are found in 30 TAC Chapter 113, Subchapter D, Division 1, §§113.2060- 113.2069 (relating to Municipal Solid Waste Landfills). Under §113.206 (relating to Compliance Schedule), an owner or operator subject to the requirements of this division shall submit the initial design capacity report

in accordance with 40 Code of Federal Regulations (CFR) Part 60, §60.757(a)(2) to the Texas Natural Resource Conservation Commission (commission) executive director within 90 days from the date the commission publishes notification in the *Texas Register* that the EPA has approved these rules. In addition, an owner or operator of a municipal solid waste landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial nonmethane organic compound emission rate report in accordance with 40 CFR §60.757(b)(2) to the executive director within 90 days from the date the commission publishes notification in the *Texas Register* that EPA has approved these rules.

TRD-9905383
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 24, 1999

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes a Default Order when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 3, 1999**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Orders is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 3, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1) COMPANY: Augustin Valenciana dba Don Balta's Restaurant; DOCKET NUMBER: 1998- 0981-PWS-E; TNRCC IDENTIFICATION (ID) NUMBER: 0710176; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106 and the Code, §341.33(d) by failing to submit water samples from the facility for bacteriological analysis; 30 TAC §290.106 by failing to provide public notice regarding failure to sample; 30 TAC §290.46(f)(1)(A) and (2) by failing to maintain a free chlorine residual of 0.2 milligrams per liter and by failing to obtain a test kit which uses a diethyl-p-phenylenediamine indicator to ensure proper chlorine residual is being maintained; 30 TAC §290.43(c)(2) and (4) and (e) by failing to keep locked at all times the roof hatch on the ground storage tank, equip the ground storage tank with a liquid level indicator, and protect the potable water storage tank with an intruder-resistant fence; and 30 TAC §290.45(d)(2)(A)(ii) by failing to provide a minimum pressure tank capacity of 220 gallons; PENALTY: $5,925; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(2)COMPANY: T. Stan Holland, Individual and Javis Enterprise, Incorporated; DOCKET NUMBER: 1998-1132-MWD-E; TNRCC ID Number: 12923; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §285.3(d) by failing to have a permit to operate a wastewater treatment facility that produces more than 5,000 gallons of waste per day; 30 TAC §26.121 and Texas Health and Safety Code, §341.041 by allowing unauthorized discharges of wastewater into a nearby creek and by failing to pay past-due payments for public health service fees; PENALTY: $12,000; STAFF ATTORNEY: Heather Otten, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: Mark Nash; DOCKET NUMBER: 1997-0422-LII-E; TNRCC ID Number: 12430; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: irrigation; RULES VIOLATED: the Code, §34.007 by acting as an irrigator or installer without having valid certificate of registration; PENALTY: $1,000; STAFF ATTORNEY: Heather Otten, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

TRD-9905391
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: August 25, 1999

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Notices of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 3, 1999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas

Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 3, 1999**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Al-Azar Enterprises, Inc.; DOCKET NUMBER: 1999-0478-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Identification Number 0039690; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(A) and the Act, §382.085(b), by failing to equip the Stage II vapor recovery system (VRS) with California Air Resources Board certified components; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2)COMPANY: American Plant Food Corporation; DOCKET NUMBER: 1999-0397-IHW-E; IDENTIFIER: Industrial Hazardous Waste Identification Number F0277; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: fertilizer supply; RULE VIOLATED: 30 TAC §335.4 and the Code, §26.121, by allowing unauthorized discharges of industrial waste; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Tim Haase, (512) 239-6007; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(3)COMPANY: Celanese Ltd.; DOCKET NUMBER: 1999-0390-IHW-E; IDENTIFIER: Solid Waste Registration Number 30134; LOCATION: Bay City, Matagorda County, Texas; TYPE OF FACILITY: chemical manufacturing; RULES VIOLATED: 30 TAC §335.221(a)(13) and (15), and 40 Code of Federal Regulations (CFR) §266.103(g) and §266.104(b), by failing to maintain the waste feed cutoff system and the associated flow measuring instruments in a proper working order, and by exceeding the carbon monoxide limit of 100 parts per million; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Aron Athavaley, 713-767-3635; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4)COMPANY: Charania, Incorporated; DOCKET NUMBER: 1997-0922-PST-E; IDENTIFIER: PST Identification Number 0064878; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §115.241 and the Act, §382.085(b), by failing to install an approved Stage II VRS which is certified to reduce emissions of volatile organic compounds (VOCs) to the atmosphere by at least 95%; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Trina Lewison, (713) 767-3607; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5)COMPANY: City of Cleburne; DOCKET NUMBER: 1999-0534-MSW-E; IDENTIFIER: Municipal Solid Waste Permit Number 534; LOCATION: Cleburne, Johnson County, Texas; TYPE OF FACILITY: municipal landfill; RULE VIOLATED: 30 TAC §330.111 and §330.55(b)(2) and (3), by failing to construct a run-on and run-off system around the active face in accordance with the approved site development plan; 30 TAC §330.111 and §330.114(5)(A), by failing to conduct random inspections of incoming loads in accordance with the approved site operating plan; 30 TAC §330.111 and §330.133(c), by failing to obtain authorization to use an alternate material daily cover; and 30 TAC §330.324 and §330.325, by failing to pay the required annual solid waste disposal fees; PENALTY: $3,125; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6)COMPANY: Dalworthington Fence Company, Incorporated dba Dalworthington Fence & Supply; DOCKET NUMBER: 1999-0533-PST-E; IDENTIFIER: PST Identification Number 0020673; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: petroleum storage tank refueling; RULE VIOLATED: 30 TAC §334.6(b)(2) and subparagraph (C), by failing to provide a written notification at least 30 days prior to initiating the removal of the underground storage tank (UST) system and failing to notify the appropriate office prior to the commencement of the removal of the UST; 30 TAC §334.55(a)(6), by failing to conduct a site assessment in response to the permanent removal from service of a UST system; 30 TAC §334.401(a), by allowing a contractor who did not hold a valid certificate of registration to engage in the removal of a UST system; and 30 TAC §334.414(c), by allowing the on-site supervisor who did not hold a valid license to supervise the removal of the UST system; PENALTY: $4,320; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(7)COMPANY: Eddie Ramirez dba Elizabeth's Fast Eddies Restaurant; DOCKET NUMBER: 1999-0078-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1250035; LOCATION: Alice, Jim Wells County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a), (b), and (e), by failing to submit repeat water samples from active service connections which are representative of water throughout the distribution system, submit water samples from active service connections throughout the distribution system for bacteriological analysis, and provide the public notification required for failure to sample; PENALTY: $1,575; ENFORCEMENT COORDINATOR: Audra Baumgartner, (512) 239-1406; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8)COMPANY: John Fayard/Fastway Systems, Inc.; DOCKET NUMBER: 1999-0392-AIR-E; IDENTIFIER: Air Account Number HX-2039-F; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: storage lot; RULE VIOLATED: 30 TAC §§101.4, 101.5, 111.147(2), 111.149(a), and the Act, §382.085(a) and (b), by utilizing an unpaved or untreated lot to store five or more trucks resulting in air contaminants being emitted into the atmosphere in such concentration and duration as to create a dust nuisance; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9)COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 1998-0119-AIR-E; IDENTIFIER: Air Account Number CB-0038-Q; LOCATION: Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: petrochemical and plastics plant; RULE VIOLATED: 30 TAC §101.6(a)(2)(E) and the Act, §382.085(b), by failing to include the estimated quantity of vinyl chloride monomer (VCM) released during an upset within 24 hours of its discovery; 30 TAC §101.20(2), §116.115(c), Permit Numbers 7699, 19871, and 19198, 40 CFR §61.65(a), and the Act, §382.085(b), by failing to

vent VCM to a control device, exceeding the barge loading rate of 875 gallons per minute for ethylene dichloride, and failing to install four rupture discs and pressure gauges downstream of control valves; 30 TAC §101.20(2), 40 CFR §61.65(a), and the Act, §382.085(b), by allowing non-emergency discharges of VCM; and 30 TAC §101.20(2), 40 CFR §61.356(g) and (h), §61.357(a) and (d), and the Act, §382.085(b), by failing to maintain records of visual inspections and tests for no detectable emissions and by failing to submit a table identifying each waste stream for its 1996 total annual benzene report; PENALTY: $118,975; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10)COMPANY: Gainesville Livestock Market Incorporated; DOCKET NUMBER: 1999-0304- AGR-E; IDENTIFIER: Enforcement Identification Number 13525; LOCATION: Gainesville, Cooke County, Texas; TYPE OF FACILITY: livestock sale and auction; RULE VIOLATED: 30 TAC §321.31(a) and the Code, §26.121, by allowing a discharge of wastewater from the animal feeding operations without a permit; 30 TAC §321.33(e), by failing to manage and control the waste from the pens; and 30 TAC §321.39(a), by failing to develop a pollution prevention plan; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(11)COMPANY: Harris County Municipal Utility District No. 127; DOCKET NUMBER: 1998- 1458-MWD-E; IDENTIFIER: Permit Number 12209-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 12209-001 and the Code, §26.121, by exceeding the ammonia-nitrogen individual grab sample limit and by accumulating sludge in the receiving stream; and 30 TAC §305.125(5), by having an unlevel clarifier unit; PENALTY: $11,875; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239- 4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(12)COMPANY: Hawkins Water System; DOCKET NUMBER: 1998-1473-PWS-E; IDENTIFIER: Public Water Supply Number 0610122; LOCATION: Krum, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e), (f)(1), (i), (j), (m), (n), (p)(1) and (2), (t), (u), and (w), and the Code, §341.033(a), by failing to ensure direct supervision of the system by a competent water works operator holding a valid Grade "D" or higher ground water operator's certification, obtain an agreement with each water customer that would allow an inspection of the individual water facilities, complete a customer service inspection certification prior to providing continuous water service to new construction, initiate a maintenance program to facilitate cleanliness, improve the general appearance of all plant facilities, reduce costly repairs, prepare and update a map of the distribution system, install mechanical chlorination equipment to provide continuous disinfection, inspect ground storage and pressure tanks annually, maintain all water storage facilities in a watertight condition, operate the system to provide a minimum pressure of 35 pounds per square inch throughout the distribution system, and post a legible sign at each production, treatment, and storage facility; 30 TAC §290.106(a)(1) and the Code, §341.033(d), by failing to submit at least one sample of water collected from the distribution system and failing to develop a sample siting plan and make it available for review by agency personnel; 30 TAC §290.45(b)(1)(B), by failing to meet minimum water system capacity requirements; 30 TAC §290.41(c)(1)(F), (3)(A), (K), (M), (N), and (O), by failing to secure from adjacent landowners a sanitary easement covering all property within 150 feet of the well location, provide a copy of the well completion data before placing the well in service, provide a well casing vent with an opening that is covered with 16-mesh or finer corrosion-resistant screen, provide a suitable sampling tap on the well discharge prior to disinfection and any treatment to facilitate the collection of samples for chemical and bacteriological analysis, install a flow meter on the well pump discharge line, and protect the well unit with an intruder-resistant fence or enclose it in a locked, ventilated well house; 30 TAC §290.43(b)(2), (c)(1), (2), (3), (4), (5), (7), and (d)(2), by locating a ground storage tank under a building, and by failing to provide the ground storage tank with a vent of the goose neck or roof ventilator type, provide the ground storage tank with a ladder to facilitate routine inspection of roof hatches, vents, overflows, the structural integrity of the roof covering, and the protective coating of the interior, cover, design, fabricate, erect, test, and disinfect all facilities for potable water storage, provide the ground storage tank with a roof access opening, provide the ground storage tank with a properly designed overflow pipe which is equipped with a hinged flap valve, equip the ground storage tank with a water level indicator located at the tank site, locate the ground storage tank's inlet/outlet connections to prevent short circuiting or stagnation of water, construct the drain of the ground storage tank so that it is not a potential agent in the contamination of the stored water, and provide all pressure tanks with a pressure release device; 30 TAC §290.42(i), by failing to use chemicals and any additional or replacement process media used in treatment of water that conforms to American National Standards Institute/National Sanitation Foundation Standards 60 and 61 for direct additives; and 30 TAC §291.101(a), by operating a retail public utility without first having obtained a certificate of public convenience and necessity; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Randy Norwood, (512) 239-1879; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(13)COMPANY: Midfield Water Supply Corporation; DOCKET NUMBER: 1999-0067-MLM- E; IDENTIFIER: PWS Number 1610086 and Permit Number 13091-001; LOCATION: public water supply and wastewater treatment plant; RULE VIOLATED: 30 TAC §290.106(e)(2), by failing to collect and submit the appropriate number of repeat and additional bacteriological samples and by failing to provide public notice of the failure to sample for each violation; 30 TAC §290.105, by exceeding the maximum contaminant level for coliform; and 30 TAC §319.7(d), by failing to submit timely monthly effluent reports; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Gayle Zapalac, (512) 239-1136; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14)COMPANY: Rafe Miers dba Muther's BBQ; DOCKET NUMBER: 1999-0523-PWS-E; IDENTIFIER: PWS Number 1520234; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a)(1), by failing to collect routine bacteriological samples; and 30 TAC §290.51, by failing to pay public health service fees; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239- 6684; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796- 7092.

(15)COMPANY: Bruce Soape dba Ocean Mobile Home Park; DOCKET NUMBER: 1999-0555- PWS-E; IDENTIFIER: PWS Number 0360023; LOCATION: near Baytown, Chambers County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a), (b)(1) and (5), and the Code, §341.033(d), by failing to take required routine monthly bacteriological samples, repeat bacteriological samples following a "coliform"

positive sample, and additional routine samples following the month where a "coliform" positive sample was documented; PENALTY: $1,200; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16)COMPANY: E. C. McFadden dba Sac N Pac; DOCKET NUMBER: 1999-0094-PST-E; IDENTIFIER: PST Identification Number 42873; LOCATION: Crane, Crane County, Texas; TYPE OF FACILITY: convenience store with retail sale of gasoline; RULE VIOLATED: 30 TAC §334.6(b)(2), by failing to provide written notification prior to removing USTs; 30 TAC §334.55(a)(3), by failing to have permanent removal of USTs performed by a licensed contractor; 30 TAC §334.7(d)(3), by failing to update registration; and 30 TAC §334.21, by failing to pay outstanding annual facility fees; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Gloria Stanford, (512) 239-1871; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(17)COMPANY: Silver Creek Materials, Incorporated; DOCKET NUMBER: 1999-0074-AIR-E; IDENTIFIER: Air Account Number TA-3345-H; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: recycling and composting plant; RULE VIOLATED: 30 TAC §101.4 and the Act, §382.085(a) and (b), by failing to control offensive odors; and 30 TAC §332.4(2) and the Act, §382.085(a) and (b), by failing to conduct composting, mulching, and land application of material in a sanitary manner to prevent nuisance conditions; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(18)COMPANY: Song Finger dba Willow Park Inn; DOCKET NUMBER: 1998-1486-MWD-E; IDENTIFIER: Permit Number 13654-001; LOCATION: Snyder, Scurry County, Texas; TYPE OF FACILITY: motel; RULE VIOLATED: 30 TAC §305.125(2) and the Code, §26.121, by operating a wastewater disposal plant without a current permit; and 30 TAC §325.2(a) and the Code, §26.121, by operating a wastewater disposal plant without a certificate; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(19)COMPANY: Melvin Woods dba Sundance Motors; DOCKET NUMBER: 1999-0487-AIR- E; IDENTIFIER: Air Account Number DB-4696-T; LOCATION: Lancaster, Dallas County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.20(c)(1) and the THSC, §382.085(b), by offering for sale a vehicle with missing or inoperable vehicle emission control devices; PENALTY: $625; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(20)COMPANY: TMT Incorporated dba Whip In #106; DOCKET NUMBER: 1999-0282-PST- E; IDENTIFIER: PST Identification Number 0054776; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of petroleum products; RULE VIOLATED: 30 TAC §115.241 and the Act, §382.085(b), by failing to install a Stage II VRS which is certified to reduce the emissions of VOCs to the atmosphere by at least 95%; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(21)COMPANY: Alan Wolcik dba Wolcik Shell; DOCKET NUMBER: 1998-1279-PST-E; IDENTIFIER: PST Identification Number 0033110; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §115.245(2) and the Act, §382.085(b), by failing to conduct pressure decay testing; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Gayle Zapalac, (512) 239-1136; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22)COMPANY: Yamuna Corporation dba C & C Discount; DOCKET NUMBER: 1999-0346- PST-E; IDENTIFIER: PST Identification Number 0000756; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §115.245(2) and the Act, §382.085(b), by failing to perform the annual pressure decay test required for Stage II VRS; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9905357
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: August 24, 1999

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The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (the Code), §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **October 3, l999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 3, l999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: The City of Asherton; DOCKET NUMBER: 1998-0635-PWS-E; TNRCC IDENTIFICATION (ID) NUMBER: 0640011; LOCATION: Asherton, Dimmit County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(e) and Texas Health and Safety Code (THSC), §341.034 by failing to operate the public water system at all times under the direct supervision of a competent water works operator holding a Grade "C" or higher operator's certificate of competency; and 30 TAC §290.45(b)(1)(D)(ii) by failing to provide a total storage capacity of 200 gallons per connection; PENALTY: $1,063; STAFF ATTORNEY: Tracy L. Gross,

Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(2)COMPANY: Joe Daneshpayeh; DOCKET NUMBER: 1998-0601-PST-E; TNRCC ID NUMBER: 11782; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, § 26.3475 by failing to equip the UST system with a release detection method; and 30 TAC §334.51(b)(2)(A), (B), and (C), and the Code, §26.3475 by failing to equip the fill pipe with a tight-fill fitting and to install spill containment equipment and overfill prevention equipment; PENALTY: $6,250; STAFF ATTORNEY: John Peeler, Litigation Division, MC 175, (512) 239-3506; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898- 3838.

(3)COMPANY: M and M Dairy, Incorporated; DOCKET NUMBER: 1999-0608-AGR-E; TNRCC ID NUMBER: 13283; LOCATION: McKinney, Collin County, Texas; TYPE OF FACILITY: animal feeding operation; RULES VIOLATED: 30 TAC §321.31(a) and the Code, §26.121(a) and (c) by discharging agricultural waste into, or adjacent to, water in the state; 30 TAC §§321.33(e), 321.38, and 321.40 by failing to locate, construct, and manage waste control facilities and land application areas to protect surface and ground waters and by failing to prevent nuisance conditions and minimize odor conditions in accordance with the technical requirements; and 30 TAC §321.42(a) by failing to notify TNRCC orally within 24 hours and in writing within 14 working days of the discharge from the retention facility or any component of the waste handling or disposal system; PENALTY: $14,875; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(4) COMPANY: North American Precast Company; DOCKET NUMBER: 1999-0560-AIR-E; TNRCC ID NUMBER: 92-8701-H; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a) by failing to obtain a permit or satisfy the conditions of a standard exemption prior to construction of a concrete batch plant; the Code, §26.121 by allowing an unauthorized discharge into, or adjacent to, any water in the state; and 30 TAC §321.152(b)(3) by failing to submit an application for registration or an application for a discharge permit by July 26, 1997; PENALTY: $6,250; STAFF ATTORNEY: John Wright, Litigation Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(5)COMPANY: S and S Convenience Store, Incorporated dba One Stop; DOCKET NUMBER: 1998-0957-PST-E; TNRCC ID NUMBER: 0027146; LOCATION: Lewisville, Denton County, Texas TYPE OF FACILITY: USTs; RULES VIOLATED: 30 TAC §115.241 by failing to install an approved Stage II vapor recovery system (VRS); 30 TAC §334.50(a) by failing to provide a method, or combination of methods, of release detection; and 30 TAC §334.51(b)(2)(C) by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank; PENALTY: $9,375; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010- 6499, (817) 469-6750.

(6)COMPANY: Shaban Jannesari dba S. Mart Foods; DOCKET NUMBER: 1998-0935-PST-E; TNRCC ID NUMBER: 34848; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: USTs; RULES VIOLATED: 30 TAC §115.242(3)(A) and the THSC, §382.085(b) by failing to equip the Stage II VRS with California Air Resources Board certified components; PENALTY: $500; STAFF ATTORNEY: Heather Otten, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7)COMPANY: Mansoor Virani; DOCKET NUMBER: 1998-0561-PST-E; TNRCC ID NUMBER: 34473; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: USTs; RULES VIOLATED: 30 TAC §115.241 and THSC, §382.085(b) by failing to install an approved Stage II VRS; and 30 TAC §334.22(a) by failing to pay annual facility fees; PENALTY: $17,500; STAFF ATTORNEY: M. Camille Morris, Litigation Division, MC 175, (512) 239-3915; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8)COMPANY: City of Venus; DOCKET NUMBER: 1998-0286-MWD-E; TNRCC ID NUMBER: 10883-001; LOCATION: Venus, Johnson County, Texas; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: the Code, §26.121 by allowing an unauthorized discharge into, or adjacent to, any water in the state; 30 TAC §305.125(5) and (9) and the Code, §26.121 by failing to properly operate and maintain all facilities and systems of treatment and control installed by the city to achieve compliance and by failing to report noncompliances to the TNRCC, which may endanger human health or safety or the environment; PENALTY: $26,000; STAFF ATTORNEY: Robin Houston, Litigation Division, MC 175, (512) 239-0682; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9905390
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: August 25, 1999

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Notice of Opportunity to Comment on ShutDown Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Shutdown Orders. Texas Water Code (the Code), §26.3475 authorizes the TNRCC to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The TNRCC staff proposes a shutdown order after the owner or operator of a underground storage tank facility fails by to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. Pursuant to the Code, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 3, l999**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Shutdown Order if a comment discloses facts or consideration that indicate that the consent to the proposed Shutdown Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Shutdown Order is not required

to be published if those changes are made in response to written comments.

Copies of each of the proposed Shutdown Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Shutdown Order should be sent to the attorney designated for the Shutdown Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 3, l999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Shutdown Orders and/or the comment procedure at the listed phone numbers; however, comments on the Shutdown Orders should be submitted to the TNRCC in **writing**.

(1)FACILITY: Softouch Car Wash; OWNER: Doy Avni Kamihetzki; DOCKET NUMBER: 1999-0241-PST-E; TNRCC IDENTIFICATION (ID) NUMBER: 0047404; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: USTs; RULES VIOLATED: 30 TAC §334.49(a) by failing to have corrosion protection for the UST systems; 30 TAC §334.50(b)(1) and (2)(A) by failing to monitor the USTs for releases at a frequency of at least once every month and by failing to provide proper release detection for the piping associated with the UST systems; 30 TAC §334.50(b)(2)(A)(i)(III) by failing to test a line leak detector at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow through for the month plus 130 gallons; and 30 TAC §334.50(d)(1)(B)(iii)(I) by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: Shutdown Order; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2)FACILITY: The Short Stop; OWNER: Mr. R. E. Harper; DOCKET NUMBER: 1999-0291- PST-E; TNRCC ID NUMBER: 66832; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: USTs; RULE(S) VIOLATED: 30 TAC §334.50(a)(1)(A) and (b)(2)(A)(i) by failing to have a release detection method capable of detecting a release from any portion of the UST systems which contain regulated substances including the tanks, piping, and other ancillary equipment and by failing to equip each separate pressurized line with an automatic line leak detector; 30 TAC §334.51(b)(2)(C) by failing to equip each tank with spill and overfill prevention equipment; and 30 TAC §334.49(a) by failing to have corrosion protection for the UST systems; PENALTY: Shutdown Order; STAFF ATTORNEY: Tracy Gross, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9905392
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: August 25, 1999

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Notice of Proposed Selection of Remedy

The executive director of the Texas Natural Resource Conservation Commission (TNRCC or Commission) is issuing this public notice of a proposed selection of remedy for the Aztec Ceramics state Superfund Site. In accordance with 30 Texas Administrative Code (TAC) §335.349(a) concerning requirements for the remedial action and the Texas Health and Safety Code, §361.187 of the Solid Waste Disposal Act concerning the proposed remedial action, a public meeting regarding the TNRCC's selection of a proposed remedy for the Aztec Ceramics state Superfund site must be held. The statute requires that the Commission shall publish notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. This notice was also published in the September 3, 1999 issue of the *San Antonio Express.*

The public meeting is scheduled at the Pheiffer Elementary School located at 4551 Dietrich , San Antonio, Texas on Thursday, October 7, 1999 beginning at 7:00 p.m. The public meeting will be legislative in nature and is not to be a contested case hearing under the Texas Government Code, Chapter 2001.

The site for which a remedy is being proposed, the Aztec Ceramics state Superfund site, was proposed for listing on the state registry of Superfund sites in the April 11, 1995 issue of the *Texas Register* (20 TexReg 2733).

The Aztec Ceramics state Superfund site is located at 4735 Emil Road in San Antonio, Bexar County, Texas.

The facility manufactured ceramic tile products for approximately 50 years prior to ceasing operation in 1988. Solid wastes generated by this process were fired and unfired tile rejects as well as glaze waste. Heavy metal pigments were used as the coloring agents in the glaze mixture.

During the spring and summer of 1997, a Phase I remedial investigation confirmed that surface and subsurface soils are contaminated with metals and that groundwater had not been impacted by this contamination. In February 1998, TNRCC conducted a removal of approximately 200 drums of waste from the site. Then in January and February 1999, the property owners paid for the demolition and removal of all buildings and removal of all contaminated debris on site except for the glaze waste-filled impoundment and contaminated soils. In February and March 1999, TNRCC conducted a Phase II remedial investigation to better define the volume of contaminated soils and glaze waste. During May 1999, TNRCC began the presumptive remedies process to evaluate remedies for cleanup of the site.

The Presumptive Remedies Document for the site evaluated two containment options (one with consolidation and one without) and two off-site disposal options (one with on-site stabilization and one with off-site stabilization) for remediation of soils above the action levels for the site. The action levels for the contaminants of concern (arsenic, barium, cadmium, chromium, lead and zinc) were based on Texas Risk Reduction Rules Standard No. 2 Medium-Specific Concentrations (MSCs) for soil inhalation, ingestion and dermal contact for an industrial use site or site-specific groundwater protection numbers calculated with the Soil Attenuation Model, whichever was determined to be the most conservative. Each alternative was evaluated against the following criteria described in the TNRCC Presumptive Remedies for Soil guidance: long term effectiveness; compliance with applicable regulations; reduction of toxicity, mobility, and volume; relative cost; impacts of implementation; and technical merit. Based on this evaluation, containment with consolidation and capping was determined to be the most appropriate remedial alternative for the site. For this reason, TNRCC is proposing containment with consolidation and capping as the proposed remedial action for the contaminated soils and glaze waste filled impoundment.

Persons desiring to make comments on the proposed remedial action or the identification of potentially responsible parties may do so at the meeting or in writing prior to the public meeting. Written comments may be submitted to Glenda Champagne, Project Manager, TNRCC, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087. All comments must be received by the close of the public meeting on September 30, 1999.

The executive director of the TNRCC prepared a brief summary of the Commission's records regarding this site. This summary and a portion of the records for this site, including documents pertinent to the proposed remedy, is available for review during regular business hours at the Carver Branch Library, 3350 Commerce, San Antonio, Texas, telephone 210-225-7801. Copies of the complete public record file may be obtained during business hours at the TNRCC, Central Records Center, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone 512-239-2920. Photocopying of file information is subject to payment of a fee.

TRD-9905408

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: August 25, 1999

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Notice of Water Quality Applications

The following notices were issued during the period of August 18, 1999 through August 24, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AFG/JOHNSON NORTH, L.L.C. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14100-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 902,000 gallons per day. The plant site is located 0.5 mile southwest of the intersection of State Highway 6 and McKeever Road, 1.1 miles east of the intersection of Thompson Ferry and Hagerson Roads in northeast Fort Bend County, Texas.

AKER GULF MARINE has applied for a major amendment to TNRCC Permit No. 12064-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 4,000 gallons per day to a daily average flow not to exceed 12,000 gallons per day. The plant site is located on the east side of Farm-to-Market Road 2725, approximately one-half mile southeast of the intersection of State Highway 361 and Farm-to-Market Road 2725 in San Patricio County, Texas.

AMERICAN BROOKSTONE, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14075-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The plant site is located approximately 2 miles west of the Town of Roanoke along Litsey Road, southeast of the intersection of Litsey Road and Henrietta Creek in Denton County, Texas.

CITY OF ARCOLA has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 13367-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located approximately 1,000 feet east of Farm-to-Market Road 521 and 3,200 feet south of the intersection of Farm-to-Market Road 521 and Texas Highway 6 in Fort Bend County, Texas.

CITY OF BELLAIRE has applied for a renewal of TNRCC Permit No. 10550-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The plant site is located at 4401 Edith Street, approximately 1 mile northeast from the intersection of Interstate Highway 610 and Post Oak Road in Harris County, Texas.

BRAZOS RIVER AUTHORITY AND LOWER COLORADO RIVER AUTHORITY has applied for a renewal of TNRCC Permit No. 10264-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,800,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 11,800,000 gallons per day. The plant site is located at 3939 Palm Valley Boulevard, adjacent to and south of State Highway 79 approximately 4 miles east of the intersection of State Highway 79 and Interstate Highway 35 in Williamson County, Texas.

CITGO REFINING AND CHEMICALS COMPANY L.P. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 02614, which authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfalls 001 and 002. The applicant operates its Deep Sea Terminal, a petroleum intermediates storage facility. The plant site is located at 4806 Up River Road in the City of Corpus Christi, Nueces County, Texas.

CREEKSIDE UTILITIES, INC. has applied for a renewal of TNRCC Permit No. 11375-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 637,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 637,000 gallons per day. The plant site is located approximately 2.5 miles east of the intersection of Farm-to-Market Road 529 (Spencer Road) and U.S. Highway 290 on the north bank of Whiteoak Bayou between Windfern Road and Fairbanks- North Houston Road in Harris County, Texas.

CITY OF DALLAS has applied for a major amendment to TNRCC Permit No. 10060-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 150,000,000 gallons per day to an annual average flow not to exceed 200,000,000 gallons per day. The plant site is located on the west bank of the Trinity River at 1020 Sargent Road in the City of Dallas in Dallas County, Texas.

CITY OF DENISON has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0047210 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 10079-005. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.0412 million gallons per day. The plant site is located on the east side of Grayson County Airport, approximately 100 feet due north of the intersection of Warehouse Road and Anderson Street, 1.1 miles northwest of the intersection of Farm-to-Market Road 691 and Farm-to-Market Road 1417, and approximately 8 miles southwest of the City of Denison in Grayson County, Texas.

EQUISTAR CHEMICALS, L.P. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of

TNRCC Permit No. 02600, which authorizes the discharge of stormwater runoff on an intermittent and flow variable basis via Outfall 001. The applicant operates a plant that manufactures polyethylene and polypropylene resins. The plant site is located at 9802 Fairmont Parkway at the intersection of Underwood Road and Fairmont Parkway in the City of Pasadena, Harris County, Texas.

FAIRWAY PARK ON 7 UTILITY, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 13565-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day. The plant site is located approximately 1.5 miles north of the intersection of State Highway 73 and Country Club Road and approximately 2.9 miles northeast from the intersection of State Highway 73 and La Belle Road in Jefferson County, Texas.

FELCOR AIRPORT UTILITIES, L.L.C. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14066-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The plant site is located on the southeast corner on North Belt Drive and John F. Kennedy Boulevard, south of the Houston Intercontinental Airport in Harris County, Texas.

FRONTIER PARK, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14015-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 8,900 gallons per day. The plant site is located in Carrice Creek Cove, 6 miles east of Milam in Sabine County, Texas.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO. 47 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 10794-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 520,000 gallons per day. The plant site is located on the east side and adjacent to Carpenters Bayou and on the north side and adjacent to the Houston Northshore Railroad, approximately 1,000 feet north-northwest of the intersection of Interstate Highway 10 and East Belt Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 109 has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0058963 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11533-001. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The plant site is located on Atascocita Road approximately 0.6 mile south of Farm-to-Market Road 1960 and approximately 2.1 miles west of the intersection of Atascocita Road and Farm-to-Market Road 1960 in Harris County, Texas.

HIDALGO COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a major amendment to Permit No. 12854-001, to authorize an increase in the daily average flow from a daily average flow not to exceed 125,000 gallons per day to a daily average flow not to exceed 375,000 gallons per day and to increase the acreage irrigated from 35 acres to 200 acres of golf course. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 3 miles northwest of the community of Perezville and 7,000 feet southwest of the intersection of Farm-to-Market Roads 1427 and 1924 in Hidalgo County, Texas.

HOOKS MOBILE HOME PARK, LTD. has applied for a renewal of TNRCC Permit No. 12083-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 18,000 gallons per day for Outfall 001 and a daily average flow not to exceed 18,000 gallons per day for Outfall 002. The plant site is located at 12019 Aldine Westfield Road, Outfall 001 is located on the south side of the intersection of the entrance to Hooks Mobile Home Park and Brooklyn Street, and Outfall 002 is located on the north side of the intersection of the entrance to Hooks Mobile Home Park and Brooklyn Street in Harris County, Texas.

CITY OF HOUSTON has applied for a renewal of TNRCC Permit No. 10495-123, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located just south of Aldine Bender Road and approximately 4,500 feet east of John F. Kennedy Boulevard in the City of Houston in Harris County, Texas.

CITY OF KINGSVILLE has applied for a renewal of TNRCC Permit No. 10696-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 950 acres of the County Golf Course. The plant site is located north of Farm-to-Market 1717, approximately 1.5 miles east of the intersection of Farm-to-Market Road 1717 and U.S. Highway 77 in Kleberg County, Texas.

LEROY BROWN AND DOROTHY BROWN FAMILY LIMITED PARTNERSHIP has applied for a renewal of TNRCC Permit No. 11357-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The plant site is located immediately north of Linscomb Road approximately 1/2 mile west of the intersection of Linscomb Road and Farm-to-Market Road 1136; approximately 1 1/2 mile south of the intersection of Farm-to-Market Road 1136 and Farm-to-Market Road 1130 in Orange County, Texas.

TOWN OF LITTLE ELM has applied for a major amendment to TNRCC Permit No. 11600-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 200,000 gallons per day to a daily average flow not to exceed 700,000 gallons per day. The plant site is located approximately 2,600 feet east of the intersection of Farm-to-Market Road 720 and Hart Road, approximately 1,000 feet south of Farm-to-Market Road 720 in Denton County, Texas.

MARTIN REALTY & LAND, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 12621-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located approximately 2 miles southeast of the intersection of Farm-to-Market Road 1485 and Farm-to-Market Road 2090 in the Country West Subdivision in Montgomery County, Texas.

CITY OF MUNDAY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 10228-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located immediately south of Farm- to-Market Road 1587 approximately 2.3 miles northwest of the intersection of Farm-to-Market 1587 and Farm- to-Market Road 266 in Knox County, Texas.

CITY OF NEWARK has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission

(TNRCC) Permit No. 11626-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located on the east bank of Derrett Creek immediately south of the Newark Beach Road Bridge, about 850 feet west of the intersection of Roger Road and Berke Street in Wise County, Texas.

CITY OF OGLESBY has applied for a major amendment to TNRCC Permit No. 10914-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 25,000 gallons per day to a daily average flow not to exceed 50,000 gallons per day. The plant site is located approximately 1.3 miles south of U.S. Highway 84 and 0.4 mile west of Farm-to-Market Road 1996 in Coryell County, Texas.

PARADISE INDEPENDENT SCHOOL DISTRICT has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit No. 13439-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 15,000 gallons per day to a daily average flow not to exceed 30,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 13949-001 will replace the existing NPDES Permit No TX0103446 issued on October 24, 1988 and TNRCC Permit No. 13439-001 issued February 18, 1994. The plant site is located approximately 500 feet west of State Highway 114 and 0.5 mile south of the Town of Paradise in Wise County, Texas. The treated effluent is discharged to an unnamed tributary of the West Fork Trinity River; thence to the West Fork Trinity River Below Bridgeport Reservoir in Segment No. 0810 of the Trinity River Basin.

CITY OF PEARLAND has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10134-008, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located approximately 1000 feet north of McHard Road, approximately 1.25 miles west of the intersection of McHard Road and State Highway 288 in Brazoria County, Texas.

PENRECO has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 00377, which authorizes the discharge of process wastewater, utility wastewater, and stormwater at a daily average flow not to exceed 75,000 gallons per day via Outfall 001; stormwater on an intermittent and flow variable basis via Outfall 002; and process area stormwater on an intermittent and flow variable basis via Outfall 003. The applicant operates a plant that produces purified mineral oils, lubricating oils, and sulfonated hydrocarbons. The plant site is located north of Dickinson Bayou, east of the Galveston, Houston, and Henderson rail line, and approximately 1500 feet southeast of the intersection of Farm-to-Market Road 517 and Farm-to-Market Road 1266 in the City of Dickinson, Galveston County, Texas.

RELIANT ENERGY INCORPORATED has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 01039, which authorizes the discharge of cooling tower blowdown and previous monitored effluents at a daily average flow not to exceed 3,950,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0006408 issued on January 21, 1983, and TNRCC Permit No. 01039 issued on June 4, 1993. The applicant operates the T.H. Wharton Steam Electric Station (SIC 4911). The plant site is located at 16301 State Highway 249, approximately 1000 feet south of the intersection of Mills Road and State Highway 249, in the City of Houston, Harris County, Texas.

ROYAL OAKS LIMITED has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 13940-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately 2.5 miles east southeast of the intersection of Farm-to-Market Road 2759 and Farm-to-Market Road 762 in Fort Bend County, Texas.

SAFE TIRE DISPOSAL CORPORATION OF TEXAS, INC. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 03865. The draft permit authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfall 001. The plant site is located at 3351 South Wyatt Road, just north of the intersection of South Wyatt Road and U.S. Highway 67 in the City of Midlothian in Ellis County, Texas.

SAN ANTONIO WATER SYSTEM has applied for a renewal of TNRCC Permit No. 10137-036, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 64,000 gallons per day. The plant site is located approximately 0.75 mile southeast of the intersection of Farm-to-Market Road 1560 and Farm-to-Market Road 471 and approximately one mile west of the intersection of State Highway Loop 1604 and Farm-to-Market Road 471 in Bexar County, Texas.

CITY OF SMITHVILLE AND LOWER COLORADO RIVER AUTHORITY have applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 10286-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The plant site is located 0.8 mile east of the City of Smithville city limit and approximately 2.3 miles east of the intersection of the State Highway 71 (now Loop 230) and State Highway 95 in Bastrop County, Texas.

SOUTHERN UTILITIES COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14080-001, to authorize the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 6,000 gallons per day. The plant site is located at County Road 178, approximately 1/10 of a mile south of the intersection of County Road 178 and Farm-to-Market Road 2868 in Smith County, Texas.

STAN TRANS PARTNERS, L.P. has applied for a renewal of TNRCC Permit No. 02109, which authorizes the discharge of stormwater runoff on an intermittent and flow variable basis via Outfall 001; and treated process wastewater, boiler blowdown, stormwater runoff, and treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day via Outfall 002. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0075311 issued on May 16, 1988, and TNRCC Permit No. 02109, issued on August 30, 1993. The applicant operates a bulk liquid storage terminal. The plant site is located at 1111 Main Dock Road, adjacent to the Texas City Ship Channel Turning Basin in the City of Texas City, Galveston County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT, ABILENE STATE PARK WASTEWATER TREATMENT PLANT has applied for a renewal of TNRCC Permit No. 11234-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located approximately 0.4 mile east of Farm-to-Market Road 89 on Park Road 32 and approximately 1 mile southwest of the intersection of

Farm-to-Market Road 89 and Farm-to-Market Road 613 in Taylor County, Texas

TRINITY BAY CONSERVATION DISTRICT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14105-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located adjacent to the intersection of Spring Branch and White's Bayou, approximately 5,250 feet northwest of the intersection of Interstate Highway 10 and State Highway 61 in Chambers County, Texas.

UNITED STATES DEPARTMENT OF AGRICULTURE has applied for a renewal of Permit No. 12315-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 0.8 miles west of the intersection of State Highway 95 and U.S. Highway 190 in Bell County, Texas.

WEST TEXAS UTILITIES COMPANY has applied for a renewal of TNRCC Permit No. 01152, which authorizes the discharge of once through cooling water and previously monitored effluents (PMEs) at a daily average flow not to exceed 131,400,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0001422 issued on May 27, 1994 and TNRCC Permit No. 01152 issued on August 30, 1993. The applicant operates the San Angelo Steam Electric Station. The plant site is located at 6465 Knickerbocker Road, approximately two miles southwest of the intersection of Knickerbocker Road and State Highway 306, in the City of San Angelo, Tom Green County, Texas.

CITY OF WICHITA FALLS has applied for a renewal of TNRCC Permit No. 10509-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 19,910,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 19,910,000 gallons per day. The plant site is located immediately south of River Road and approximately 1,000 feet northeast of the intersection of River Road and Rosewood Street in the City of Wichita Falls in Wichita County, Texas.

Concentrated Animal Feeding Operation

Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

BILLY MACK CHAMNESS DAIRY, INC has applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES Permit No. 03525 to renew and replace State Permit 03525 authorizing the applicant to operate an existing dairy operation at a maximum capacity of 780 head in Hopkins County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the south side of County Road 1196 approximately 1/4 mile west of the intersection of State Highway 254 and County Road 1196 in Hopkins County, Texas. The facility is located in the drainage area of Lake Fork Reservoir in Segment No. 0512 of the Sabine River Basin.

El CID LAND & CATTLE, INC. and DON OPPLIGER have applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES State Permit No. 03708 to authorize the applicant to operate an existing beef cattle facility at a maximum capacity of 4,000 head in Parmer County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.The existing facility is located on a private road, approximately one and one-half miles west of its intersection with Farm-to-Market 2396 and this intersection is approximately one and one-half miles north of the junction of Farm-to-Market Road 2396 and US Highway 60, Parmer County, Texas. The facility is located in the drainage area of White River Lake in Segment No.1240 of the Brazos River Basin.

MOODY DAIRY, INC has applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES Permit No. 01549 to authorize the applicant to operate a new dairy operation and an existing beef cattle operation at a maximum capacity of 4,000 and 12,000 head respectively in Gray County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.The existing facility is located 0.5 miles south of State Highway 152 and 1.5 miles south of U.S. Highway 60 at a point approximately 9 miles east of the City of Pampa, Texas. The facility is located in the drainage area of the North Fork Red River in Segment No. 0224 of the Red River Basin.

RAFTER 3 FEEDYARD INC has applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES Permit No. 02330 to replace and renew state permit authorizing the applicant to operate an existing beef cattle operation at a maximum capacity of 40,000 head in Castro County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.The existing facility is located on the east side of FM 1055, approximately one and one half miles south of the intersection of FM 1055 with State Highway 86 in Castro County, Texas. The facility is located in the drainage area of White River Lake in Segment No. 1240 of the Brazos River Basin.

TASCOSA FEEDYARD, INC has applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES Permit No. 01547 to renew and replace a state permit to authorize the applicant to operate an existing beef cattle feedlot facility at a maximum capacity of 25,000 head in Randall County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.The existing facility is located from the intersection of Farm-to- Market 2381 and U.S. Interstate 40, west two miles along I-40, then south one mile along an unnamed county road where the facility sits along the west side of the county road. The facility is located in the drainage area of Upper Prairie Dog Town Fork Red River in Segment No. 0229 of the Red River Basin.

RANDY VISS has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a TPDES Permit No. 02950 to renew and replace a state permit to operate an existing dairy facility at a maximum capacity of 1,450 milking head and a maximum total of 1950 head in Erath County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land.The existing facility is located on the east side of Farm-to-Market Road 219 approximately five miles south of the intersection of Farm-to-Market Road 219 and County Road 1702 and seven miles southeast of Dublin in Erath County, Texas. The facility is located in the drainage area of North Bosque River in Segment No. 1226 of the Brazos River Basin.

LLOYD WOLF has applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES Permit No. 03757 to amend an existing permit and authorize the applicant to expand a dairy operation from a maximum capacity of 750 to 995 head in Archer County,

Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land.The existing facility is located in Archer County, Texas, on the west side of Wolf Road and 1.3 miles south of the intersection of Wolf Road and Farm-to-Market Road 2581, said intersection being 1.4 miles west of the intersection of Farm-to-Market Road 2581 and U. S. Highway 281. The facility is located in the drainage area of Lake Arrowhead in Segment No. 0212 of the Red River Basin.

TRD-9905397
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 25, 1999

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Notice of Water Rights Applications

W & A PROPERTIES, INC., MINGLEWOOD, INC., AND SNIDER TIMBERLANDS FAMILY LIMITED PARTNERSHIP, P.O. Box 1636, Marshall, Texas 75671, applicants, seek a water use permit pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC § 295.1, et seq. The applicants seek authorization to construct and maintain a dam creating a reservoir for in- place recreational use on an unnamed tributary of Gandia Branch, tributary of the Sabine River, Sabine River Basin, Panola County, Texas. The reservoir will impound not to exceed 870 acre-feet of water and will have a surface area of 78 acres at its normal operating level. The reservoir will be located approximately 10.5 miles north of Carthage, Texas and Station 0+00 on the centerline of the dam will be S 24.78° E, 925 feet from the southeast corner of the Elijah Morris Original Survey, Abstract No. 433, Panola County, also being 32.303° Latitude and 94.368°W Longitude. There is one acre of land not owned by the applicants that will be inundated at the normal level of the reservoir. The owners of this acre of land have provided an easement for inundation of this land to W & A Properties, Inc., and Minglewood, Inc.

SIDNEY KACIR, P.O. Box 5119, Temple, TX 76505, applicant, seeks to amend permit No. 4095 to appropriate public water pursuant to §11.122, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§ 295.1, et seq. Applicant is the owner of permit No. 4095 which authorizes owner to divert and use not to exceed 240 ac-ft of water per year at a maximum diversion rate of 2.5 cfs (1100 gpm) from the Little River, tributary of the Brazos River, to irrigate 120 acres out of 270 acres of land in Bell County, approximately 10.5 miles southeast of Belton, Texas. Diversion is authorized from a reach of the Little River that borders the applicant's 270 acre tract of land in the William Sparks League, Abstract No. 19, Bell County. The permit has a time priority of January 17, 1984. Permittee is authorized to divert water only when the flow of the Little River at USGS gaging station 08106500 at Cameron equals or exceeds 55 cfs for the months of April through August and 20 cfs during other months, exclusive of releases dedicated by Brazos River Authority for subsequent use downstream. Applicant seeks to amend the permit by 1) authorizing diversion of an additional 308 ac-ft of water per year from the Little River, for a total annual diversion of 548 ac-ft 2) adding 77 acres of land to be irrigated on an adjacent 71.997 acre tract of land and on another adjacent 17.132 acres of land, both in the aforementioned Sparks Survey, both owned by the applicant, for a total of 197 irrigated acres within 3 tracts of land totalling 359.139 acres, and 3) extending the authorized location of diversion to include any point on the south bank of the river that borders the applicant's land as described in the original permit, as well as any point on the south bank of that section of the river that borders the 71.997 acre tract of land adjacent to the 270 acres of land described in the permit. The 71.997 and the 17.132 acre tracts were conveyed to the applicant in separate Warranty Deeds recorded in Vol. 2502, page 111 and Vol. 2760, page 156, respectively, in the Bell County Deed Records. The new diversion point at the upstream boundary of the 71.997 acre tract is located at Latitude 30.946° North, 97.369° West, on the south bank of the Little River

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9905398
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 25, 1999

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Proposal for Decision

The State Office Administrative Hearing has issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on August 23, 1999. Executive Director of the Texas Natural Resource Conservation v. Iso, Tex ,Inc., Respondent. SOAH Docket No. 582-99-0144 ; TNRCC Docket No. 98-0446-RAW-E. In the matter to be considered by the Texas natural Resource Conservation Commission on a date and time to be determined by

the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-9905396
Douglas A. Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: August 25, 1999

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Voluntary Cleanup Program

In accordance with Solid Waste Disposal Act, Subchapter S, §361.613, the executive director of the Texas Natural Resource Conservation Commission (TNRCC or commission) annually shall calculate and publish the commission's costs to administer the Voluntary Cleanup Program. The staff of the Innocent Landowner Program, based on authority from Solid Waste Disposal Act, §361.752(b), shall also annually calculate and publish a rate established for the purposes of identifying the costs recoverable by the commission. The TNRCC is publishing the hourly billing rate of $81 for both the Voluntary Cleanup Program and the Innocent Landowner Program for fiscal year 2000.

The Voluntary Cleanup Law was effective September 1, 1995 and as such, this will be the fifth year of operation for the program. The commission is able to use data from the previous four years to calculate the rate for fiscal year 2000. The Innocent Landowner Program Law was effective September 1, 1997. As such, this will be the third year of operation for the program. Therefore, the commission will be able to use data from the previous two years to calculate the rate for fiscal year 2000. A single hourly billing rate for both programs was derived from current projections for salaries plus the fringe benefit rate and the indirect cost rate, less federal funding divided by the estimated billable salary hours. The hourly rate for the two programs was calculated, and then rounded to a whole dollar amount. Billable salary hours were derived by subtracting the release time hours from the total available hours and a further reduction of 27.7% to account for non-site specific hours. The release time includes sick leave, jury duty, holidays, etc. and is set at 16.96% (fiscal year 1998's actual rate). The current fringe benefit rate is 21.84%. Fringe benefits include retirement, social security and insurance expenses, and are calculated at a rate that applies to the agency as a whole. The current indirect cost rate is 31.88%. Indirect costs include allowable overhead expenses, and are also calculated at a rate that applies to the whole agency. The billings processed for fiscal year 2000 will use the hourly billing rate of $81 for both the Voluntary Cleanup Program and the Innocent Landowner Program, and will not be adjusted. All travel-related expenses will be billed as a separate expense. After an applicant's initial $1,000 application fee has been expended by the Innocent Landowner Program or the Voluntary Cleanup Program in-site review and oversight, invoices will be sent to the applicant on a quarterly basis for payment of additional program expenses.

The commission does anticipate receiving federal funding during fiscal year 2000 for the development and implementation of the Innocent Landowner Program and for the continued development and enhancement of the Voluntary Cleanup Program. These federal funds are instrumental in the commission having some of the lowest rates of any state Voluntary Cleanup Program. If the federal funding anticipated for fiscal year 2000 does not become available, the commission may publish a new rate. Federal funding of the Voluntary Cleanup Program and the Innocent Landowner Program should occur prior to October 1, 2000.

For more information concerning this notice, please contact Charles Epperson, Voluntary Cleanup Section, Remediation Division, MC 221, Texas Natural Resource Conservation Commission, 12118 Park 35 Circle, Building D, Austin, Texas 78753 (P.O. Box 13087, 78711), (512) 239-5891.

TRD-9905287
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 19, 1999

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Texas Department of Protective and Regulatory Services

Open Enrollment Adoption Contract Notice

Announcement: Open Enrollment Notice. The Texas Department of Protective and Regulatory Services (PRS), pursuant to its authority under Human Resources Code Chapter 40, hereby offers to licensed Child Placing Agencies with experience in placing special-needs children the opportunity to enroll as providers in the Texas Open Enrollment Adoption contract. PRS recognizes the need for adoption placement and post-placement (finalization) services for youth in PRS conservatorship during Texas Fiscal Year 2000 (9/1/1999 through 8/31/2000). Accordingly, this Notice is issued to invite applicants to provide adoption placement and post-placement (finalization) services.

Description: Applicants are invited to enroll under this Notice to provide licensed adoption placement, and post-placement (finalization) services for children in PRS's conservatorship who are free for, have been placed into, and whose adoptions have been supervised and consummated. Applicants must have a child placing agency license from the PRS Office of Child Care Licensing.

Eligible Applicants: Eligible applicants include public or private agencies with demonstrated knowledge, competence, and qualifications in providing adoption placement and finalization services to special-needs children, are currently licensed by PRS's Office of Child Care Licensing to provide such services, and whose license is in good standing. Demonstrated experience in placing special-needs children will be screened based on the applicant's having placed at least 12 special-needs children in a 12-month period. Applicant screened out may subcontract with an experienced agency until their staff meet this criterion. PRS will screen applications to determine whether an agency meets the criteria for enrollment. Funds provided through this contract are to reimburse the enrollees for defined placement services and defined post-placement (finalization) services. Current enrollees may apply. Eligible applicants may call or write the contact person for the region (see attachment) in which the applicant's child placing agency is physically located. The contract manager will send the applicant a copy of the Open Enrollment package.

Limitations: PRS reserves the **absolute right** to cancel or rescind this enrollment, in whole or in part, or to reject it, in whole or in part. PRS does not guarantee any number of placements, finalizations, or types of services as a part of this enrollment. PRS shall not reimburse any costs incurred in applying for this enrollment.

Term and Total Value: The enrollment period will remain open from **September 1, 1999, through August 31, 2000**. Funding is wholly contingent upon PRS receipt of federal and state revenue for these services. At the Department's option, the contract awarded under this enrollment may be renewed annually for a period not to exceed four years including the above-referenced period. Contract renewal is not automatic; contracts may be renewed at the Department's option, when authorized, and when it is in the Department's best interests.

Evaluation and selection: Regional and state office CPS program staff will review and screen the proposals. The screening is based on the criteria in the Eligibility section. Any child placing agency that meets the criteria will be enrolled.

Deadline: There is no deadline for submitting an enrollment application for the contract period of September 1, 1999 through August 31, 1999, or any portion thereof. The contract will become effective after screening and signature by PRS management staff. Since the process of screening the proposals and obtaining signatures may take from six weeks to two months, please plan to submit two months prior to the time you prefer the contract to begin.

Contact Person: To obtain a complete copy of the open enrollment package, please contact the PRS contract manager located in the PRS region in which your child placing agency's headquarters is physically located. See the list of designated adoption contract managers.

Designated Regional Adoption Contract Managers

Region 1: Wendy Docker, Contract Manager; P.O. Box 10528 M.C. 217-4; 1622 10th Street; Lubbock, TX 79408; (806) 742-9169.

Region 2: Jeannie Barr, Contract Manager; 3610 Vine Street M.C. 001-7; P.O. Box 6635; Abilene, TX 79608; (915) 691-8216.

Region 3: Florence Warren, Contract Manager; 1351 Bardin Road; P.O. Box 181839 M.C. 012-5; Arlington, TX 76018-1839; (817) 264-4132.

Region 4: Judy Kuna, Contract Manager; 3303 Mineola Hwy., M.C. 313-7; Tyler, TX 75702; (903) 533-4174.

Region 5: Paula Lovell, Contract Manager; 2027 N. Stallings Dr. M.C. 244-3; P.O. Box 630050 (75963-0050); Nacogdoches, TX 75964; (409) 569-5328.

Region 6: Pat Nayle, Contract Manager; 5100 Southwest Freeway. M.C. 362-2; Houston, TX 77056; (713) 599-5835.

Region 7: Velda Rios, Contract Manager; 7901 Cameron Road, Bldg. II.; Austin, TX 78767-5995 M.C. 019-1; (512) 834-3303.

Region 8: Kathi Kidd, Contract Manager; 3635 SE Military Dr.; P.O. Box 23900 M.C. 942-1; San Antonio, TX 78223-0990; (210) 337-9589.

Region 9: Larry Torres, Contract Manager; 1030 Andrews Hwy., Suite. 202; Midland, TX 79701; M.C. 235-8; (915) 681-0205.

Region 10: Henry Payan, Contract Manager; 215 N. Stanton (79901) M.C. 112-7; El Paso, TX 79999-0002; (915) 545-8075.

Region 11: Irma Rodriguez, Contract Manager; 2520 So. "I" Road; Edinburg, TX 78359; M.C. 108-1; (956) 316-8110.

Region 11: Alma S. Noyola; 4201 Greenwood M.C. 073-8; Corpus Christi 78467, (361) 878-7536.

TRD-9905358
C. Ed. Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Filed: August 24, 1999

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Texas State Board of Public Accountancy

Correction of Error

The Texas State Board of Public Accountancy proposed an amendment to 22 TAC §523.61. The rule appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4708).

Due to a Texas Register error, §523.61 was published incorrectly. Subsections (a) and (b) should have appeared as follows:

[~~(a) A mandatory CPE program was established pursuant to the Public Accountancy Act of 1979, Texas Civil Statutes, Article 41a-1, §6(a), which provided the board with authority to adopt a system of required continuing professional education for licensees.~~]

[~~(b)~~] A licensee shall be responsible for ensuring that continuing professional education [~~CPE~~] credit hours claimed conform to the board's standards as outlined in §§523.21-523.32 [~~523.31~~] of this title (relating to Program Presentation Standards; Instructors; Program Sponsors; Learning Environment; Evaluation; Program Measurement; Credits for Instructors and Discussion Leaders; Credits for Published Articles and Books; Maximum [~~Minimum~~] Hours Required as a Participant; Limitation for Non-Technical [~~Nontechnical~~] Courses; [~~and~~] Alternative Sources of Continuing Professional Education ; and Ethics Course).

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Texas Public Finance Authority

Request for Proposals for Underwriting Services

The Texas Public Finance Authority (the "Authority") is requesting proposals for underwriting services. The deadline for proposal submission is 2:00 p.m., September 15, 1999.

The Authority's Board of Directors (the "Board") will make its selection based upon its evaluation of firms best qualified to serve the interests of the State and the Authority. By the Request for Proposal, however, the Board has not committed itself to select underwriting firms. The Board reserves the right to negotiate individual elements of a proposal and to reject any and all proposals.

Copies of the Request For Proposal may be obtained by calling or writing Marce Snyder or Jeanine Barron, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas, 78711, (512) 463-5544.

TRD-9905312
Judith Porras
General Counsel
Texas Public Finance Authority
Filed: August 20, 1999

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Public Utility Commission of Texas

Notice of Appeal of Municipality's Rate Decision

Notice is given to the public of the filing with the Public Utility Commission of Texas of an appeal on August 20, 1999, from a municipality's rate rejection, pursuant to §§33.051, 33.053, 33.054, and 33.055 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Petition for Review of Municipality's Rejection of Central Power and Light Company's Switchover Tariff

and Request for Expedited Relief, originally filed in Tariff Control Number 20545, severed and filed in Docket Number 21266 before the Public Utility Commission of Texas.

Central Power and Light Company petitions the commission for review of the rejection of its Switchover tariff by the City of Santa Rosa, Texas in an action taken by the municipality's governing body on August 10, 1999; and requests expedited relief in the form of the adoption of interim rates in order to effect uniform system-wide rates.

Persons who wish to comment upon, or who wish to intervene or otherwise participate in the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711- 3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than September 8, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905394
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 25, 1999

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Notices of Applications for Amendment to Service Provider Certificates of Operating Authority

On August 18, 1999, Valu-Line of Longview, Inc., and Advanced Communications Group, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend their service provider certificates of operating authority (SPCOA) granted in SPCOA Certificate Numbers 60008 and 60223. The Applicants intend to: (1) relinquish SPCOA Number 60223 and consolidate it with SPCOA Number 60008, (2) transfer control of Valu-Line of Longview, Inc. to Ionex Telecommunications, LLC, (3) remove the resale-only restriction on Valu-Line of Longview, Inc.'s SPCOA, and (4) to expand Valu-Line of Longview, Inc.'s geographic area to include those areas within the state of Texas currently served by Texas Alltel, Inc., and Alltel Texas, Inc.

The Application: Application of Valu-Line of Longview, Inc., and Advanced Communications Group, Inc. for an Amendment to their Service Provider Certificates of Operating Authority, Docket Number 21249.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at PO Box 13326, Austin, Texas 78711-3326 no later than September 8, 1999. You may contact the commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21249.

TRD-9905308
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 20, 1999

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On August 20, 1999, Z-Tel Communications, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60195. Applicant intends to remove the resale-only restriction and expand its geographic area to include the entire state of Texas.

The Application: Application of Z-Tel Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 21255.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than September 8, 1999. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21255.

TRD-9905355
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 1999

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On August 20, 1999, NET-tel Corporation filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60258. Applicant intends to remove the resale-only restriction.

The Application: Application of NET-tel Corporation for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 21256.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than September 8, 1999. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21256.

TRD-9905356
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 1999

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Notices of Applications for Service Provider Certificates of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 17, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Source Communications LLC for a Service Provider Certificate of Operating Authority, Docket Number 21245 before the Public Utility Commission of Texas.

Applicant intends to provide a full range of telecommunication services, including, but not limited to, local exchange service, basic

local telecommunication service, enhanced calling features, switched access service, long distance service, Internet service and wireless.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than September 8, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905276
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 19, 1999

♦ ♦ ♦

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 18, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Miracle Communications for a Service Provider Certificate of Operating Authority, Docket Number 21247 before the Public Utility Commission of Texas.

Applicant intends to provide resold local switched services, including, but not limited to, monthly recurring, flat rate local exchange service, extended metro service, foreign exchange service, custom calling service, Caller ID and any other services available for resale from the underlying incumbent local exchange carrier.

Applicant's requested SPCOA geographic area includes the areas of Texas currently served by Southwestern Bell Telephone Company and GTE Southwest, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at PO Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than September 8, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905307
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 20, 1999

♦ ♦ ♦

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 19, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Listing Services Solutions, Incorporated, d/b/a LSSi, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21252 before the Public Utility Commission of Texas.

Applicant intends to provide resold interexchange telephone service.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at PO Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than September 8, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905331
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 1999

♦ ♦ ♦

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 23, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Wiggins Enterprises, Inc., d/b/a The Phone Pros for a Service Provider Certificate of Operating Authority, Docket Number 21261 before the Public Utility Commission of Texas.

Applicant intends to provide resold telecommunications services, including, but not limited to, dial tone, and custom calling features.

Applicant's requested SPCOA geographic area includes all areas within the interLATA service area boundaries of all local exchange service providers in the greater Houston and San Antonio areas in the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than September 8, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905360
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 1999

♦ ♦ ♦

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 23, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Concert Communications Sales LLC for a Service Provider Certificate of Operating Authority, Docket Number 21262 before the Public Utility Commission of Texas.

Applicant intends to provide resold local telecommunications and exchange services for both voice and data communications.

Applicant's requested SPCOA geographic area includes all exchanges within the state of Texas currently served by Southwestern Bell Telephone Company, GTE Southwest, Inc., and AT&T Communications of the Southwest, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin,

Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than September 8, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905361
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 24, 1999

♦ ♦ ♦

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 16, 1999, to amend a certificate of convenience and necessity pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Lower Colorado River Authority to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Caldwell, Bastrop, and Fayette Counties, Docket Number 21243 before the Public Utility Commission of Texas.

The Application: The Lower Colorado River Authority (LCRA) requests approval to construct approximately 61.18 miles of 345-kV transmission line, to be known as the FPP–Lytton Springs Line. The proposed project will be located within Caldwell, Bastrop, and Fayette Counties. The Electric Reliability Council of Texas (ERCOT), Independent System Operator (ISO) has reviewed this project and finds that the project is needed to relieve overloading contingency conditions on the Holman to Lytton Springs 345-kV transmission line and to integrate the new Lost Pines Generating Facility, (projected to be energized in June 2001) into the ERCOT system.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9905282
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 19, 1999

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Public Notices of Amendments to Interconnection Agreements

On August 17, 1999, Southwestern Bell Telephone Company and Logix Communications Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21244. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21244. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by September 16, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21244.

TRD-9905309
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 20, 1999

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On August 18, 1999, Southwestern Bell Telephone Company and Allegiance Telecom of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory

Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21250. The joint application and the underlying interconnection agreement are available for public inspection at the commission's office in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21250. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by September 16, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21250.

TRD-9905310
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 20, 1999

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Public Notice of Interconnection Agreement

On August 19, 1999, Southwestern Bell Telephone Company and Excel Communications, Inc., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21253. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21253. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by September 16, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21253.

TRD-9905311
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 20, 1999

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Public Notice of Workshop on Implementation of Customer Education Program for Electric Choice (SB 7, PURA §39.902)

The Public Utility Commission of Texas (commission) will hold a workshop regarding Implementation of Customer Education Program for Electric Choice (Senate Bill 7, 76th Legislature, Regular Session (1999) (SB 7), Public Utility Regulatory Act (PURA) §39.902) on Thursday, September 16, 1999, at 1:00 p.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701. Project Number 21251, *Implementation of Senate Bill 7 Provisions Regarding Customer Education For Electric Choice (SB 7, PURA §39.902)*, has been established for this proceeding. The purpose of this workshop is to solicit input from interested parties that will assist in implementing the provisions of SB 7, PURA §39.902, Customer Education. These provisions require the commission to:

(1) develop and implement a neutral and non-promotional education program to inform customers, including low-income and non-English speaking customers, about changes in electric service resulting from the opening of the retail electric market;

(2) not duplicate efforts of retail electric providers and other private entities or target areas served by municipalities or electric cooperatives; and

(3) report on the status of the educational program to the electric utility restructuring legislative oversight committee on or before December 1, 2001.

The commission requests interested persons be prepared to comment on the following issues:

1. What is the best way to ensure interested parties can participate throughout the process of implementation?

2. What is the best way to involve non-traditional parties such as community-based organizations and local and county government agencies in the implementation process?

3. What methods should be employed to keep interested parties abreast of the process?

4. At what points in the implementation process should the commission seek input from interested parties?

5. What issues and processes should be considered to best educate and promote informed electric choice among the general population?

6. In what areas might there be overlap of education efforts?

7. What factors need to be considered in educating and promoting informed choice among low-income and non-English speaking customers or customers with disabilities?

8. What can the commission do to minimize customer confusion?

9. What can the commission do to encourage participation in a pilot electric choice program?

Timelines and additional information on this project shall be filed in Central Records and available for view on the PUC Web site no later than September 6, 1999. Questions concerning the workshop or this notice should be referred to Grace Godines, Information Specialist, Office of Customer Protection, (512) 936-7131. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9905332
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 1999

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Railroad Commission of Texas

Correction of Error

The Railroad Commission of Texas proposed new §3.106. The rules appeared in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6167).

Due to agency error:

On page 6167, the telephone number for Terri Eaton was inadvertently submitted as (512) 463-6077. The correct number is (512) 463-6977.

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The Texas A&M University System

Request for Consultant

The Texas Engineering Experiment Station (TEES) intends to engage a consultant, pursuant to Texas Government Code, Chapter 2254, to develop, compile and perform a survey of pump users for the Turbomachinery Lab.

A letter notifying the Texas Engineering Experiment Station of the vendor's interest will be accepted by fax at (409) 862-2602 or mail to: Linda G. Huff, Purchasing Manager, Texas Engineering Experiment Station, College Station, TX, 77843-3000. Letters of interest should reference contract number 99-001LH and will be received until 2:00 p.m., September 8, 1999. The letter of interest must include the consultant name, address, telephone number, the name of a contact person and one company reference from a recently completed survey sampling project.

Agency Contact: Additional questions should be directed to: Linda G. Huff, TEES Purchasing Manager at (409) 847-9475 or by fax at (409) 862-2602.

TRD-9905330
Vickie Burt Spillers
Executive Secretary to the Board of Regents
The Texas A&M University System
Filed: August 23, 1999

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Texas Department of Transportation

Public Notice

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation will conduct a public hearing to receive comments from interested parties concerning proposed approval of: engineering design services at the Cloverfield Airport; and an increase in funding for the construction project at Del Rio International Airport.

The public hearing will be held at 9:00 a.m. on Thursday, September 9, 1999, at 150 East Riverside, South Tower, 5th Floor Conference Room, Austin, Texas 78704. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of

time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director, Public Information Office, 125 E. 11th St., Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

For additional information please contact Suetta Murray, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4504.

TRD-9905281
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: August 19, 1999

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Texas Turnpike Authority Division of the Texas Department of Transportation

Notice of Intent

Notice of Invitation: The Texas Turnpike Authority (TTA) Division of the Texas Department of Transportation (TxDOT) intends to issue one or more requests for proposal (RFP) to enter into multiple contracts with professional engineers, pursuant to Chapter 361 of the Texas Transportation Code, Chapter 2254, Subchapter A, of the Texas Government Code, and 43 TAC §53.20, et. seq., to provide engineering services. To be considered, providers must submit a Letter of Request (LOR), requesting a copy of the RFP(s), which letter must also contain the name of the provider, a contact person, and an address to which the RFP may be sent. To qualify for eventual contract award, a selected prime engineer must commit to performing a minimum of 30% of the actual contract work. Any potential interested prime provider or subprovider currently employing former TxDOT employees should be aware of the impact of laws regulating the awarding of contracts to firms employing former agency employees, including Government Code, Chapter 572.

Overview of Request for Proposal (RFP) 86-0RFP5001: The specific content of the RFP will be determined at the discretion of the TTA and may differ from the description below. Through this RFP the TTA plans to retain a number of professional civil consulting engineering firms to serve as Section Engineers for performing detailed analyses and designs, and for preparing construction Plans, Specifications, and Estimates (PS & E) for the following potential Turnpike Projects located in northern Travis and southern Williamson Counties:

SH 45, FM 685 to west of Anderson Mill Road, approximately 15 miles in length. Classifications: Convert Non-Freeway to Turnpike, New Location Turnpike, New Location Non-Freeway, New Interchange, and partial New Interchange.

Loop 1, Parmer Lane to SH 45, approximately 4 miles in length. Classifications: Convert Non-Freeway to Turnpike, New Location Turnpike, and New Interchange.

US 183A, Lakeline Boulevard to the South Fork of the San Gabriel River, approximately 10.5 miles in length. Classification: New Location Turnpike.

TTA is considering dividing the Turnpike projects into design and construction sections, varying in length from approximately one to four miles. TTA's plan is to have successful firms sign multiple year section engineering contracts and be available on an as needed basis ("Work Authorization" contracts).

The design work to be performed on the Turnpike Projects by the Section Engineers will be conducted under the direction and review of the TTA's General Engineering Consultant (GEC), and TTA staff. The work to be provided by each Section Engineer may include the following tasks:

1. design field surveys and/or low-level flight aerial photogrammetric surveys and mapping;

2. final horizontal and vertical geometric design and plans of roadways including main lanes, ramps, cross roads, frontage roads, interchanges, and grade separations;

3. grading design, plans, cross sections, and quantities;

4. drainage, hydrologic, and hydraulic design and plans;

5. water quality design and plans;

6. layout and structural design and plans of hydraulic structures;

7. erosion control design, storm water pollution prevention plan, and water pollution abatement plan development;

8. signing, pavement marking, and signalization design and plans;

9. retaining wall and noise wall design and plans;

10. traffic Control Plans, Detours and Sequence of Construction design and plans;

11. illumination design and plans;

12. bridge design and plans;

13. soil core hole drilling and geotechnical testing for structure design;

14. fencing;

15. utility Coordination, and review of utility relocation designs performed by others for conformance with the highway design;

16. possible design and preparation of utility relocation plans;

17. agreement preparation;

18. assembly of plans, details, and notes;

19. preparation of quantities, summaries, and engineer's estimate;

20. determine application of TxDOT's standard specifications, preparation of special provisions and special specifications;

21. delivery of electronic and hard copy - plans, specifications, and estimates on approved medium and format.

Historically Underutilized Business (HUB) Goal: The assigned HUB goal for participation in the work to be performed under the contracts awarded pursuant to this RFP is expected to be 20% of each contract amount.

Deadline: A letter of request notifying TTA of the provider's request for an RFP will be accepted by fax at (512) 936-0970 or by mail, or hand delivery to: Texas Turnpike Authority Division Texas Department of Transportation 125 East 11th Street Austin, Texas 78701, Attention: Edward P. Pensock Jr., P.E.

Letters of Request will be received until 5:00 p.m. on September 20, 1999.

Agency Contact: Any Requests for additional information regarding this notice of invitation should be addressed to Edward P. Pensock Jr., P.E. of TTA at (512) 936-0960 or fax (512) 936-0970.

TRD-9905406
Phillip Russell
Director
Texas Turnpike Authority Division of the Texas Department of Transportation
Filed: August 25, 1999

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County of Uvalde

Request for Comments and Proposals

House Bill 606, 75th Legislature, the State of Texas, permits a County Commissioners' Court of a rural county (defined as a county with a population of 100,000 or less) to request that the Texas Department of Human Services (TDHS) contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate in available beds in the county.

Uvalde County Commissioners' Court is considering desirability of requesting that TDHS contract for more Medicaid nursing facility beds in Uvalde County. The Commissioners' Court is soliciting comments form all interested parties on the appropriateness of such a request. Additionally, the Commissioners' Court seeks to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid certified nursing facility beds. Comments and/or proposals should be submitted to Judge William R. Mitchell of the Uvalde County Commissioners' Court, Uvalde County Courthouse, Courthouse Square Box 3, Uvalde, Texas 78802. Telephone (830) 278-3216 by 5:00 p.m. on October 21, 1999. Action will be taken by the Uvalde County Commissioners' Court at its regular meeting on Monday, October 25, 1999.

TRD-9905325
William R. Mitchell
County Judge
County of Uvalde
Filed: August 23, 1999

♦ ♦ ♦

Texas Water Development Board

Correction of Error

The Texas Water Development Board proposed an amendment to §357.4. The rule appeared in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5855).

Due to Texas Register error:

Amendments to §357.4(h)(3) were shown to include the removal of language which does not exist in the rule. The reference to the "Texas Department of Agriculture" was removed by amendment in the March 5, 1999 *Texas Register* (24 TexReg 1580), adopted in April and became effective April 28, 1999. The only amendment to §357.4(h)(3) included in this submission was to remove an unnecessary comma.

♦ ♦ ♦

Texas Workers' Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission proposed amendments to 28 TAC §134.1001. The rule appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4723).

Due to agency error:

On page 4724, left column, fourth paragraph, "Section 134.1003" should be "Section 134.1001."

On page 4733, bottom of left column and top of right column, §134.1001(e)(2)(Q) should read as follows:

"(Q)[~~(N)~~] Indications for bone growth stimulators [~~(internal and external (CPT codes 20974 and 20975)~~] include:

(i) revision spinal fusion;

(ii) history of spinal fusion with prior or delayed union at different level;

(iii) multiple level spinal fusion;

(iv) use of allograft;

(v) ~~spondylolisthosis greater than grade two; and~~ nonassociated high risk problems; e.g. ~~metabolic bone disease;~~ smokers, ~~diabaetics, obesity,~~ and pseudoarthroses."

On page 4733, right column, new subparagraph (R), fourth line, all the words on that line should be struckthrough. Section 134.1001(e)(2)(R) should read as follows:

"(R)[~~(O)~~]Interventional pain procedures may include spinal cord or peripheral nerve stimulation and/or implantable infusion pumps and [~~CPT codes for these procedures include 64555, 63650, 63655, 63685, 63750, 62350, 63780, 64575, and 64590. These procedures~~] are performed to achieve one or more of the following objectives:

The Commission will accept additional public comments only on these corrections to 28 TAC §134.1001. Comments on the corrections must be received by 5:00 p.m. on September 27, 1999. You may comment via the Internet by accessing the Commission's website at http://www.twcc.state.tx.us and then clicking on "Proposed Rules." You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Donna Davila at the office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. Please clearly identify your comments as in response to the corrections tot he proposed amendments to 28 TAC §134.1001 (Spine Treatment Guideline).

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Invitation to Applicants for Appointment to the Medical Advisory Committee

The Texas Workers' Compensation Commission at its August 5, 1999 public meeting revised the Standards and Procedures for the Medical Advisory Committee. The revisions include the addition of an insurance carrier representative and qualifications for that new position, and revision of the terms of appointment for all positions. The approved Standards and Procedures are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of 12 health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in

developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership The committee, appointed by the Commissioners, is composed of 17 members who must be knowledgeable and qualified regarding work-related injuries and diseases.

Twelve (12) members of the committee shall represent specific health care provider groups. These members shall include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, and a registered nurse. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint an insurance carrier representative to serve on the MAC. This member may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The Commissioners shall appoint a representative of employers, a representative of employees, and two representatives of the general public. These appointees shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term. Abandonment will be deemed to occur if any primary or alternate member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. The terms of appointment will be maintained as follows:

Primary: Year Ending in Odd Number Chiropractor Osteopath Pharmacy Dentist General Public 1 Private Health Care Facility Occupational Therapist Insurance Carrier

Primary: Year Ending in Even Number Registered Nurse Public Health Care Facility Medical Equipment Physical Therapist General Public 2 Medical Doctor Podiatrist Employer Employee

Alternate: Year Ending in Odd Number Chiropractor Osteopath *Pharmacy Dentist *General Public 1 Private Health Care Facility Occupational Therapist Insurance Carrier

Alternate: Year Ending in Even Number Registered Nurse Public Health Care Facility Medical Equipment Physical Therapist General Public 2 Medical Doctor Podiatrist Employer Employee

(* These alternate positions were initially appointed to serve staggered terms from the primary positions. In order to return to a consistent application of the Procedures and Standards, when these terms expire August 31, 2000, the alternate positions' expiration date will revert to the year ending in odd number format).

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate: a. Preparation of a suitable agenda. b. Planning MAC activities. c. Establishing meeting dates and calling meetings. d. Establishing subcommittees. e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC a. in advertising to promote themselves or their business, b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advertising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

Invitation to Applicants for Appointment to the Medical Advisory Committee

The Texas Workers' Compensation Commission invites all qualified individuals to apply for openings on the Medical Advisory Committee in accordance with the eligibility requirements of the Standards and Procedures for the Medical Advisory Committee. Each member must be knowledgeable and qualified regarding work-related injuries and diseases.

Commissioners for the Texas Workers' Compensation appoint the Medical Advisory Committee members, which is composed of 17 primary and 17 alternate members representing health care providers, employees, employers, insurance carriers, and the public.

The purpose and tasks of the Medical Advisory Committee are outlined in the Texas Workers' Compensation Act, §413.005, which includes advising the Commission's Medical Review Division on the development and administration of medical policies and guidelines.

The Medical Advisory Committee meets approximately once every six weeks. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

During a primary member's absence, an alternate member must attend meetings for the Medical Advisory Committee, subcommittees, and work groups to which the primary member is appointed. The alternate may attend all meetings and shall fulfill the same responsibilities as primary members, as established in the Standards and Procedures for the Medical Advisory Committee as adopted by the Commission.

Medical Advisory Committee positions currently open: 1. Primary member - Registered Nurse, term through 8/31/2000 2. Primary member - General Public 1, term through 8/31/2001 3. Primary member - Insurance Carrier, term through 8/31/2001 4. Alternate member - Public Health Care Facility, term through 8/31/2000 5. Alternate member - Chiropractor, term through 8/31/2001 6. Alternate member - Employee, term through 8/31/2000 7. Alternate member - Dentist, term through 8/31/2001 8. Alternate member - Insurance Carrier, term through 8/31/2001

For an application, call Teresa Barajas at 512-440-3962 or Ruth Richardson at 512 440 3518.

TRD-9905411
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: August 25, 1999

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Notice of Request for Offers for Contracting and Consulting Services Contract

In order to ensure that notice is provided to all potential vendors who may desire the opportunity to provide services, and consistent with the provisions of Texas Government Code, §2254.029, the Texas Workers' Compensation Commission hereby publishes this notice of request for offer (RFO) from Qualified Information Services Vendors to assist the TWCC in re-engineering business processes and system redesign, herein referred to as the Business Process Improvement Project. The Business Process Improvement Project will optimize agency processes in order to improve the level of customer service

and ensure the efficient use of resources for the benefit of all workers' compensation system participants.

Copies of the RFO: A copy of the RFO which includes the details of the project and the various requirements is posted on the Texas Marketplace, Electronic State Business Daily website @ www.marketplace.state.tx.us. For additional information, vendors may contact Allen McDonald, Agency Business Process Improvement, MS-6, Texas Workers' Compensation Commission, 4000 S. IH 35, Austin, Texas 78704; phone number: 512.440.3814; email address: amcdonald@twcc.state.tx.us.

Closing Date: The offer must be submitted to the individual listed above before 3:00 p.m., Central Standard Time, September 24, 1999. Offers received after that time will not be accepted.

Procedure for Award: A selection committee will evaluate vendor responses. In evaluating offers, the selection committee will consider: (1) the demonstrated competence, knowledge, and qualifications of all professional staff who will work on the BPI Project and of the Vendor firm as a whole; (2) the extent to which the Vendor's proposed services accomplish the purposes and specifications of the RFO; (3) the reasonableness of costs for the services proposed; (4) the extent of the Vendor's knowledge of business process re-engineering and information technology experience with either a state governmental entity or an insurance carrier; and (5) when other considerations are equal, a Vendor whose principal place of business is within the State of Texas, or who will manage the project wholly from one of its offices within the State of Texas, will be given preference. TWCC shall employ evaluation criteria in the selection of a vendor as generally outlined in the RFO.

TRD-9905412
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: August 25, 1999

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